



ETHICS COMMITTEE

Report No. 125

Matter of privilege referred by the Speaker on 31 July 2012 relating to an alleged deliberate misleading of the House by a Minister

Introduction and background

1. The Ethics Committee (the committee) is a statutory committee of the Queensland Parliament established under section 102 of the *Parliament of Queensland Act 2001* (the POQA or the Act). The current committee was appointed by resolution of the Legislative Assembly on 17 May 2012.
2. The committee's area of responsibility includes dealing with complaints about the ethical conduct of particular members and dealing with alleged breaches of parliamentary privilege by members of the Assembly and other persons.¹ The committee investigates and reports on matters of privilege and possible contempts of parliament referred to it by the Speaker or the House.
3. The matter in this report concerns an allegation by the Member for Woodridge, Mrs Desley Scott, that the Minister for Communities, Child Safety and Disability Services, Hon Tracy Davis deliberately misled the House on 17 May 2012.
4. In accordance with Standing Order 269, the Member for Woodridge wrote to the Speaker on 30 May 2012, asking that the Speaker refer the matter to the committee.
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 member's complaint. The Speaker subsequently received a submission from the Minister on 15 June 2012.
6. On 31 July 2012, after examining the information before her, the Speaker referred the matter to the committee for its consideration.
7. The committee invited both parties to provide a supplementary submission to the committee. The committee received a submission from the Minister on 16 August 2012.

¹ S.104B *Parliament of Queensland Act 2001*.

The referral

8. Upon referring the matter to the committee the Speaker made the following statement in the House:²

On 30 May 2012, I received a complaint from the member for Woodridge, Mrs Desley Scott, about statements made to the House by the Minister for Communities, Child Safety and Disability Services on 17 May 2012. The Minister stated during question time—

In fact, it is quite amazing that the member opposite has forgotten that the former Labor government sacked 320 front-line police.

Late that evening the Minister corrected the record. The Minister stated—

I also want to correct the record. During my response to the question I raised the issue of the former Labor government getting rid of 320 staff out of the police. In my response I was referring to police support staff and not police.

The member for Woodridge, Mrs Desley Scott, takes issue with the correction undertaken by the Minister and alleges that the correction of the record was inadequate and itself misleading. I conclude that there is merit in the committee considering the matter in detail and I will be referring the matter to the Ethics 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 the further attention of the House via the committee.

The member's complaint

9. The allegation made by the Member for Woodridge against the Minister relates to the Minister's answer to a question without notice on 17 May 2012.

10. The Minister stated during question time—

Statement 1

In fact, it is quite amazing that the member opposite has forgotten that the former Labor government sacked 320 front-line police.

11. The Minister later corrected the record by stating—

Statement 2

I also want to correct the record. During my response to the question I raised the issue of the former Labor government getting rid of 320 staff out of the police. In my response I was referring to police support staff and not police.

12. The Member for Woodridge takes issue with the Minister's correction and alleges that it is also misleading.

13. The Minister's statements will be assessed against the elements of the contempt of deliberately misleading the House as outlined below.

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 Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 31 July 2012, at 1264.

- (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* (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
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.⁴
17. 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
18. The *Code of Ethical Standards: Legislative Assembly of Queensland* emphasises to members that “... misleading is a wider concept than making incorrect statements. A totally factually correct statement can still be misleading.”⁶
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. Recklessness, whilst reprehensible in itself, falls short of the standard required to hold a member responsible for deliberately misleading the House.⁷

Establishing a prima facie case of possible contempt

20. 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 Chapters 44 and 45 of the Standing Orders. The committee is also bound by the *Instructions to committees regarding witnesses* contained in Schedule 3 of the Standing Orders.
21. The committee found that it had sufficient material before it from all parties to deliberate on the matter. This material included both parties' correspondence to the Speaker and the Minister's supplementary submission to the committee.

³ Standing Order 266(2).

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 5, 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.

22. 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?

Statement 1

23. The committee was of the view that the Minister's first statement, that the former government had 'sacked 320 front-line police', by the Minister's own admission by seeking to correct the record, was incorrect.

Statement 2

24. In relation to the second statement, the committee considered whether the Minister was incorrect by stating that the former government had 'gotten rid of 320 staff out of the police.'
25. In her submission to the committee, the Minister provided a news article reported in the on-line version of the *ABC News* dated 28 October 2011 titled, *Unions angry over civilian police job cuts* as the basis for her statement. The article stated—
- About 330 civilian jobs will be cut from the Queensland Police Service (QPS) through voluntary redundancies.*
26. The committee was not presented with any additional evidence to test the veracity or otherwise of the Minister's statement.
27. Therefore, on the information before the committee, there is no evidence to suggest that the Minister's second statement was factually incorrect.

Were any of the Minister's statements misleading?

Statement 1

28. The committee considers that by seeking to correct the record, the Minister has in effect acknowledged that her statement could have been misleading.

Statement 2

29. The Member for Woodridge alleged that, 'the Minister, in her correction corrected the aspect of dealing with the fact that staff were support staff, and not front-line staff. However she did not refer to the fact that the Minister clearly stated that the staff were sacked.'
30. The Minister, in her correction did not specify how the staff reductions were made. The news article provided by the Minister in her submission to the committee refers to staffing cuts being made through voluntary redundancies.
31. The Minister, in her submission to the committee asserted that she was using 'colloquial English in both her answer to the Question Without Notice and correction.'
32. The committee considered that the question as to whether the Minister's second statement was misleading, was open to interpretation.

33. On one hand, a reasonable person might accept the Minister's statement for its colloquial intention and argue that it was not misleading in that it conveyed the outcome that staffing cuts were made.
34. On the other hand, a reasonable person might argue that the Minister's second statement was misleading in that the term 'getting rid of' did not convey the voluntary nature of the redundancies.
35. On balance, the committee was of the view that the imprecise nature of the minister's second statement could have resulted in it being 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?

36. The Member for Woodridge asserted in her correspondence to the Speaker that, 'the statements made by the Minister contained information that was misleading, that the Minister knew to be misleading, and the Minister thereby deliberately misled the House in relation to those matters.'
37. In response to the allegations the Minister stated in her correspondence to the Speaker that, 'in making this statement there was never any deliberate attempt to mislead the House in any aspect of my response or my subsequent correction.'
38. 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*,⁸ 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.
39. In her submission to the committee, the Minister stated that 'there was never any intention by myself to mislead the House as clearly evidenced by my correction of the record later that same day.'
40. McGee further notes that remarks made off the cuff in debate can rarely fall into the category of deliberate mislead, nor can matters about which the member can only be aware of in an official capacity. However, where a member can be assumed to have personal knowledge of the stated facts and made the statement in a situation of some formality (for example, by way or personal explanation) a presumption of an intention to mislead the House will more readily arise.
41. The Minister made her initial statement during Question Time, but later in the evening was able to correct the record after a period of contemplation, which may be considered towards the case of the Minister's intention to mislead the House.
42. However, having considered the information before it, the committee was of the view there is no evidence to suggest that the Minister intended to mislead the House.
43. The committee considers that this matter demonstrates the need to remind members to ensure the accuracy of their statements made in the House particularly when seeking to correct the record.

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

Conclusions

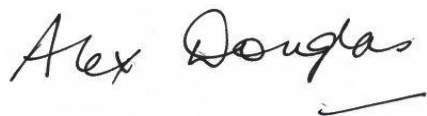
44. On the information before the committee, there is no *prima facie* case of deliberately misleading the House by a Minister. The Minister is therefore not guilty of a contempt.

Conclusion 1

On the information before the committee, there is no *prima facie* case of deliberately misleading the House by a Minister. The Minister is therefore not guilty of a contempt.

Recommendation 1

The committee recommends that the House take no further action in relation to the matter, and reminds the Minister and all members of the need to ensure the accuracy of statements made in the House particularly when seeking to correct the record.

A handwritten signature in black ink that reads "Alex Douglas". The signature is written in a cursive style with a horizontal line underneath the name.

Dr Alex Douglas MP
Chair

September 2012

Membership — 54th Parliament

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Member for Gaven

Mrs Jo-Ann Miller MP, Deputy Chair
Member for Bundamba

Mr Ian Berry MP
Member for Ipswich

Mr Ian Kaye MP
Member for Greenslopes

Ms Jackie Trad MP
Member for South Brisbane

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