



ETHICS COMMITTEE

Report No. 129

Matter of privilege referred by the Speaker on 27 November 2012 relating to an alleged deliberate misleading of the House by a member

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 former Minister for Housing and Public Works and member for Moggill, Dr Bruce Flegg MP, that the member for Bundamba, Mrs Jo-Ann Miller MP deliberately misled the House on 30 October 2012.
4. In accordance with Standing Order 269, the then Minister wrote to the Speaker on 31 October 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 member regarding the complaint. The Speaker subsequently received a submission from the member for Bundamba on 15 November 2012.
6. On 27 November 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 member for Moggill on 25 January 2013, and from the member for Bundamba on 31 January 2013.

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

Honourable members, on 31 October 2012 I received correspondence from the then Minister for Housing and Public Works, the member for Moggill, alleging that the member for Bundamba deliberately misled the House on 30 October 2012 in statements made during debate on the aged-care motion. The member for Bundamba stated—

‘Now they are being thrown out so that this government can sell a public asset out from under them.’

The member for Moggill asserts that the sale of caravan parks does not involve eviction of the existing tenants and that the member’s statement is misleading. On 2 November 2012 I sought further information from the member for Bundamba in accordance with standing order 269(5). The member for Bundamba challenges the member for Moggill’s assertions. I do not intend to canvass the details of the claims and counterclaims of the parties to the matter. Suffice to say there is considerable examination of fact required to determine the matter. Accordingly, I have decided to refer the matter to the Ethics Committee. In doing so, I wish to emphasise that I have formed no view as to whether there has been a breach of privilege but rather that there are sufficient issues in play to warrant the further consideration of the House via the committee. I remind members that standing order 271 now applies and members should not refer to the matter in the House.

Committee Membership

9. On 29 November 2012, the member for Bundamba advised the committee in accordance with Standing Order 272(1) of her intention to stand down from the committee for consideration of this matter.
10. On 12 December 2012, the Speaker advised the committee in accordance with Standing Order 272(2), that the member for Mackay, Mr Tim Mulherin MP would replace the member for Bundamba during consideration of this matter.

Definition of contempt

11. 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

12. 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

² Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 27 November 2012, at 2718.

³ Standing Order 266(2).

13. There are three elements to be established when it is alleged that a member has committed the contempt of deliberately misleading the House:
 - firstly, 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
14. 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
15. 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
16. 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

17. 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.
18. 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 supplementary submissions to the committee.
19. 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 member's intention to mislead the House?

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

⁵ Members' Ethics and Parliamentary Privileges Committee, *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; Members' Ethics and Parliamentary Privileges Committee, *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.

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

20. The issue the committee considered in relation to this element was whether the member for Bundamba was incorrect by stating, 'now they are being thrown out so that this government can sell a public asset from under them.'
21. In his letter to the Speaker, Dr Flegg asserted that, '... it has been more than adequately explained to the Member [e.g. during the Estimates process] that this sale process does not involve eviction. It is clear that her claim is a deliberate misleading of the Parliament.'
22. In his submission to the committee, Dr Flegg further stated that, 'It has also been made very clear on every occasion that a caveat is to be placed on the sale for a period of eighteen months to ensure that within that time evictions do not occur as claimed by the member.'
23. On 20 September 2012, the then Minister Flegg advised the Transport, Housing and Local Government Committee, at a hearing where the member for Bundamba was present, that he had 'directed an 18-month block on the change of usage of the parks following the sale which will protect the tenure of the current residents,' and that, 'if the new owners do not make changes to the operation of the caravan parks, residents may be able to continue residing at the parks after the 18-month period has expired.'⁸
24. In response to the allegations, Mrs Miller stated that, 'there are some arrangements in place in respect of some of the caravan parks that mean, even if they are sold now, the tenants will not be evicted immediately. However, there is no doubt that at some time in the future, the residents of the caravan parks will be evicted to allow potential new owners to develop or manage the properties as they see fit.'
25. Mrs Miller further stated that, 'I refute the former Minister's contention that the statement I made was false. I gave no timeframe for the residents to be 'thrown out', and I have seen no evidence to indicate that the residents will not face this threat at some time in the future.'
26. In her submission to the committee, the member for Bundamba stated that '... it is difficult to envisage a situation where any purchaser of these properties would be in a position to run these caravan parks as a going concern, given the operating losses of the parks, alleged by Dr Flegg. It cannot therefore be proven, to the civil standard of beyond a reasonable doubt, that my statement contained an[y] apparent or proven factually incorrect matter. In fact, until the parks are sold and the purchasers indicate what their plans are for the sites, it will not be possible to establish the correctness or otherwise of the statement.'
27. The committee notes that the issue of whether the caravan parks will be sold is not in contention. The pivotal issue in Dr Flegg's complaint relates to the member's statement that 'now they are being thrown out'.
28. On the one hand, the committee considered that if the use of the word 'now' is taken in its literal sense, then it would appear that the statement is factually incorrect. However on the other hand, Mrs Miller has argued that the statement was made in a future sense.
29. On the face of the material before the committee, the committee finds that it is arguable as to whether the member for Bundamba's statement that, 'now they are being thrown out so that this government can sell a public asset from under them', contains factually incorrect matter.

⁸ Transport, Housing and Local Government Committee, Answer to Question on Notice No. 14, 20 September 2012.

Were any of the member's statements misleading?

30. Dr Flegg asserted in correspondence to the Speaker that the member's statement was misleading as, 'residents may well be persuaded that they are about to be evicted and need to go and contract for alternative accommodation or move their homes when such action is not necessary.'
31. The member for Bundamba stated in correspondence to the Speaker that, 'I gave no timeframe for the residents to be 'thrown out', and I have seen no evidence to indicate that the residents will not face this threat at some time in the future.'
32. The member for Bundamba in her submission to the committee also stated that, 'my use of the term 'thrown out' was a use of the vernacular in the context of a heated debate in which very strong opinions were expressed from members from either side of the chamber.'
33. The committee notes that the member did not specifically refer to a timeframe for the occupants to be removed. However, the use of the word 'now' in the statement 'now they are being thrown out' may give a reasonable person the impression that occupants are currently being, or are in imminent danger of being removed from their homes. In that context, a reasonable person could have been misled.
34. On the face of the material before the committee, the committee finds that a reasonable person could have been misled by the member's statement that, 'now they are being thrown out so that this government can sell a public asset from under them'.

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?

35. As mentioned above, previous ethics committees, and David McGee (McGee), 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, while reprehensible in itself, falls short of the standard required to hold a member responsible for deliberately misleading the House.
36. 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.⁹
37. In her letter to the Speaker, the member for Bundamba stated that, "my statement was made during the 5.30pm debate on 30 October 2012. My comments should therefore be taken in that context, as part of the 'cut and thrust of parliamentary debate'".
38. However, McGee also states that 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.¹⁰
39. At 10.31am on 30 October 2012, the member for Bundamba gave notice of the motion. At 5.30pm, the member then moved the motion and spoke to the motion. While it is true that the statements were made 'in the cut and thrust' of the 5.30 debate, it could also be considered that the statements were made in a situation of formality (a mover of a motion) in which the member gave a considered and prepared speech.

⁹ McGee, David, *Parliamentary Privilege in New Zealand*, third edition, Dunmore Publishing Ltd, Wellington, 2005, at 654.

¹⁰ Note 9.

40. However, as noted above, 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. In her submission to the committee, the member for Bundamba stated that, 'In making this statement I did not believe it to be untrue, and there was never any deliberate attempt to mislead the House.'
42. On the face of the material before the committee, there is no compelling evidence to suggest that the member for Bundamba intended to mislead the House.

Conclusions

43. On the information before the committee, the committee finds that it is arguable that the member's statement contained factually incorrect matter and in that context, a reasonable person could have been misled by the statement.
44. However, the committee finds on the face of the information before it, there is no compelling evidence to suggest the member for Bundamba intended to mislead the House.
45. In considering this matter the committee deliberated on the conduct of members in the House generally. The committee recognises that debate in the Chamber is often robust and off-the-cuff remarks are made frequently during heated exchanges. Nevertheless, members have a duty to uphold high standards of behaviour and refrain from acting recklessly by making unqualified statements.
46. The committee echoes the sentiments of its predecessor committees, specifically the Members' Ethics and Parliamentary Privileges Committee in its Report No. 35:¹¹
... deliberately misleading the House is a very serious contempt. If the Assembly cannot rely on members' statements in the House, the whole system of responsible democracy is at risk. To deliberately mislead the House is akin to perjury in a judicial proceeding. In both cases, the function of the organ of government is undermined.
47. The Ethics Committee, in its Report No. 119 found recklessness in making unqualified statements deeply concerning.¹² The current committee also expresses a concern with an element of recklessness in the members' statement that is the subject of this report.
48. Although recklessness falls short of the standard required to hold a member responsible for deliberately misleading the House, the committee considers that recklessness resulting in incorrect or misleading statements to the House is a serious matter.
49. This committee foreshadows its intention to hold members to a high standard of behaviour on all future matters referred to it. The committee considers that the preservation of high standards of behaviour is essential for protecting the institution of Parliament and its members.

¹¹ Members' Ethics and Parliamentary Privileges Committee, *Report No. 35 – Report on a matter of privilege: A member making a deliberately misleading statement in a 'dissenting report'*, tabled 15 September 1999, at para 10.

¹² Ethics Committee, *Report No. 119 Matter of privilege referred by the Speaker on 12 October 2011 relating to an alleged deliberate misleading of the House by a member*, tabled 1 December 2011, at 9.

Conclusion 1

On the information before the committee, the committee finds that it is arguable that the member's statement contained factually incorrect matter and in that context, a reasonable person could have been misled by the statement.

Conclusion 2

On the information before the committee, there is no compelling evidence to indicate that the member for Bundamba intended to mislead the House.

Recommendation 1

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

Recommendation 2

The committee strongly reminds the member and 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 refrain from acting recklessly by making unqualified statements.

Recommendation 3

The committee recommends that the House note its intention to hold members to a high standard of behaviour when considering all future matters referred to it.

Recommendation 4

That the member for Bundamba correct the record at the next opportunity and apologise to the House.

A handwritten signature in black ink, appearing to read 'Peter Dowling', written in a cursive style.

Peter Dowling MP
Chair

May 2013

Membership — 54th Parliament

Mr Peter Dowling MP, Chair
Member for Redlands

Mrs Jo-Ann Miller MP, Deputy Chair¹³
Member for Bundamba

Mr Ian Berry MP¹⁴
Member for Ipswich

Mr Ian Kaye MP
Member for Greenslopes

Mr Tim Mulherin MP¹⁵
Member for Mackay

Mr Michael Pucci MP¹⁶
Member for Logan

Mr Curtis Pitt MP¹⁷
Member for Mulgrave

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¹³ On 29 November 2012, the member for Bundamba advised the committee of her intention to stand down from consideration of this matter in accordance with Standing Order 272(1).

¹⁴ Until 12 February 2013.

¹⁵ On 12 December 2012, the Speaker advised the committee that the member for Mackay would replace the member for Bundamba during consideration of this matter in accordance with Standing Order 272(2).

¹⁶ From 12 February 2013.

¹⁷ On 14 February 2013, the Leader of the Opposition appointed the member for Mulgrave to replace the member for South Brisbane and the member for Mackay to replace the member for Bundamba for the duration of the meeting held on 14 February 2013, in accordance with Standing Order 202.