



ETHICS COMMITTEE

Report No. 130

Matter of privilege referred by the Speaker on 29 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 26 November 2012.
6. On 29 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

On 31 October 2012 the then Minister for Housing and Public Works, the member for Moggill, wrote to me alleging that the member for Bundamba deliberately misled the House in debate. The member claimed to have been approached by a constituent, a resident of public housing, who had in that week received what the member claimed was 'what can only be known as an eviction notice'. The member for Moggill alleged that the department had no record of an eviction notice such as that described by the member for Bundamba. The member for Moggill noted that this was a serious matter as it could engender fear amongst public housing tenants.

In accordance with standing order 269(5), I wrote requesting further information from the member for Bundamba. I note that both the explanation provided by the member for Bundamba and the material supplied by the member do not appear to adequately address the issues in the complaint. In particular, the material sent by the department to the constituent and provided by the member for Bundamba in correspondence is clearly identified as an occupancy review, not an eviction notice. I have, therefore, referred the matter to the Ethics Committee.

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.

The allegation

11. The allegation made by the former Minister for Housing and Public Works relates to the member's statement made during debate on the Aged Care Motion on 30 October 2012.
12. The member for Bundamba stated:³

I have been approached by a constituent, a resident of public housing who has care of an adult daughter with an intellectual disability, who only this week received what can only be known as an eviction notice from the home she has lived in for many years. [Emphasis added].
13. The member for Moggill takes issue with the statements that the Member for Bundamba was approached by a 'constituent' and that her constituent received an 'eviction notice' 'this week'.
14. The member for Moggill alleges that the statement is misleading as he has been informed by the Department of Housing and Public Works that 'no eviction notice has been issued to a long term public housing tenant that fits the facts presented by the Member'.

² Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 29 November 2012, at 2718.

³ Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 30 October 2012, at 2215.

Definition of contempt

15. 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

16. 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.⁴
17. 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.⁵
18. 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.⁶
19. 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.’⁷
20. 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.⁸

⁴ Standing Order 266(2).

⁵ McGee, David, *Parliamentary Privilege in New Zealand*, third edition, Dunmore Publishing Ltd, Wellington, 2005, at 654-655.

⁶ 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.

⁷ 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.

⁸ 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.

Establishing a prima facie case of possible contempt

21. 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.
22. 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.
23. 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?

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

24. The issue the committee considered in this element is whether the statement, 'I have been approached by a constituent, a resident of public housing who has care of an adult daughter with an intellectual disability, who only this week received what can only be known as an eviction notice from the home she has lived in for many years' is factually incorrect.
25. In letters to the Speaker and to the committee, both Dr Flegg and Mrs Miller sought to argue what was considered a 'constituent' and the timing of the receipt of the notice. However, the core issue derived from Dr Flegg's complaint that the committee considered was whether or not the public housing tenant was issued with an eviction notice.
26. In correspondence to the Speaker, the member for Bundamba provided a copy of a letter dated 23 October 2012 from the Ipswich Housing Service Centre within the Department of Housing and Public Works to an unidentified tenant titled, 'under-occupancy review of your household'. The letter stated to the tenant that, 'your household is being reviewed to determine if you have a continued need for the four bedroom property you are living in... [as] these properties are in high demand.'
27. In essence, the letter indicates that those tenants who are assessed as no longer needing a four bedroom property will be transferred to another social housing property.
28. Dr Flegg advised in correspondence to the Speaker that he was informed by the Department of Housing that, 'no eviction notice has been issued to a long term public housing tenant that fits the facts presented to Parliament by the member for Bundamba.'
29. In response, Mrs Miller stated that she did not refer to the notice as an eviction notice and her statement was a 'reference to the document being akin to an eviction notice, as it only provides the individual with two options, move to another property or pay more rent...'
30. In her submission to the committee, Mrs Miller further stated that, 'this means that the two women in question will be issued with a notice requiring them to move from the property they currently occupy. The practical effect of this Notice means that this can correctly be described as 'what can only be known as an eviction notice'. I do not therefore believe that my statement was factually incorrect or misleading.'

31. On the material presented to the committee, it would appear that the tenants concerned were not issued with an eviction notice per se. However, the member for Bundamba's statement referred to 'what can only be known as an eviction notice'.
32. The committee considers that on the one hand, an argument could be made that as the letter refers to a process whereby the tenant may be transferred to another social housing property, that it is incorrect to refer to the notice as akin to an eviction notice. However, on the other hand, an argument could be made that such a notification *is* akin to an eviction notice as the outcome is that the tenants would need to leave their current accommodation.
33. On the face of the material before the committee, the committee considers that it is arguable that the member's statement that, 'I have been approached by a constituent, a resident of public housing who has care of an adult daughter with an intellectual disability, who only this week received what can only be known as an eviction notice from the home she has lived in for many years,' contains factually incorrect material.

Were any of the member's statements misleading?

34. As outlined in the discussion of the first element, in correspondence to the Speaker, Mrs Miller stated that she did not refer to the notice as an eviction notice and her statement was a 'reference to the document being akin to an eviction notice ...'.
35. The committee considers that on the one hand, a reasonable person might conclude that the statement was not misleading in that tenants received a notice that was akin to an eviction notice because at the end of the process the tenants would be relocated.
36. However, on the other hand, a reasonable person might be misled if they took the comparison with an eviction notice to be that the tenant would be removed as opposed to being transferred to other suitable housing.
37. 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, '...I have been approached by a constituent, a resident of public housing who has care of an adult daughter with an intellectual disability, who only this week received what can only be known as an eviction notice from the home she has lived in for many years.'

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?

38. 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.
39. McGee further notes that remarks made off the cuff in debate can rarely fall into the category of deliberate misleading, nor can matters about which the member can only be aware of in an official capacity.⁹
40. 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

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

example, by way or personal explanation) a presumption of an intention to mislead the House will more readily arise.¹⁰

41. In correspondence to the Speaker, Dr Flegg stated that the member's statements were deliberately designed to mislead the Parliament. He further stated that, 'I think it is also a serious matter that deserves further action as the attempt to engender fear among public housing tenants that they can be evicted without reasonable cause by a politically motivated Minister is likely to have significantly deleterious effects on public housing tenants...'
42. 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'".
43. At 10.31am on 30 October, the member herself gave notice of the motion. At 5.30pm, the member then moved the motion and spoke to the motion. So while it was true that the statements were made 'in the cut and thrust' of the 5.30 debate, in this context, they were made in a situation of formality (a mover of a motion) which was considered and prepared.
44. The member for Bundamba also stated in correspondence to the committee that, "my use of the term 'what can only be known as an eviction notice' 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. In making this statement I did not believe it to be untrue, and there was never any deliberate attempt to mislead the House."
45. On the face of the information before the committee, the committee finds that there is no compelling evidence to suggest that the member for Bundamba intended to mislead the House.

Conclusions

46. 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.
47. In considering this matter and the alleged deliberate mislead referred to in Report No. 129, 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.
48. 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.
49. 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.

¹⁰ Note 9.

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.

50. 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.
51. 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.

Conclusion 1

On the information before the committee, the committee finds that it is arguable as to whether the member's statement was factually incorrect and misleading.

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.



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.