



ETHICS COMMITTEE

Report No. 131

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

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 Minister for Transport and Main Roads, Hon Scott Emerson MP, that the Leader of the Opposition and member for Inala, Ms Anastacia Palaszczuk MP deliberately misled the House on 1 November 2012.
4. In accordance with Standing Order 269, the Minister wrote to the Speaker on 1 November 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 Leader of the Opposition regarding the complaint. The Speaker subsequently received a submission from the Leader of the Opposition 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 Minister Emerson on 25 January 2013, and from the Leader of the Opposition 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 1 November 2012 I received correspondence from the Minister for Transport and Main Roads alleging that the Leader of the Opposition deliberately misled the House in a statement during question time on that date. The Leader of the Opposition stated—

'I now table a copy of a letter received by my office yesterday which indicates that the transport minister, unlike other ministers, is refusing to release details of his diary and the people he has met with.'

The Leader of the Opposition then tabled a letter dated 31 October 2012 from a deidentified officer in the Department of Transport and Main Roads to the Office of the Leader of the Opposition relating to a right to information request. The minister contends that the Leader of the Opposition sought to deliberately mislead the House by claiming that the minister refused to release details of his diary. On 7 November 2012 I sought further information from the Leader of the Opposition in accordance with standing order 269(5). The Leader of the Opposition provided counterarguments to the minister's contention. Again I do not intend to canvass the details of the claims and counterclaims of the parties to this matter. Suffice to say there is considerable examination of the fact required to determine the matter.

Accordingly, I have decided to refer the matter to the Ethics Committee. Again in doing so I wish to stress 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 this matter in the House.

Definition of contempt

9. 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

10. 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
11. There are three elements to be established when it is alleged that a member has committed the contempt of deliberately misleading the House:

² Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 27 November 2012, at 2718-2719.

³ Standing Order 266(2).

- 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
12. 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
 13. 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
 14. 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

15. 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.
16. 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.
17. 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 Leader of the Opposition's statements contain any apparent or proven factually incorrect matter?
 - Were any of the Leader of the Opposition's statements misleading?
 - (If yes), did the Leader of the Opposition know at the time the statements were made that they were misleading, and was it the Leader of the Opposition'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 Leader of the Opposition's statements contain any apparent or proven factually incorrect matter?

18. The issue the committee considered in this element was whether the Leader of the Opposition was incorrect by stating that, 'the transport minister, unlike other ministers, is refusing to release details of his diary and the people he has met with.'
19. The Leader of the Opposition tabled a letter dated 31 October 2012, from a Right to Information (RTI) officer in the Department of Transport and Main Roads to the Office of the Leader of the Opposition in relation to the Leader of the Opposition's right to information request. The Leader of the Opposition requested access to the Minister's diary in a 'Calendar Details Style' format from 3 April 2012 to 15 October 2012.
20. The letter from the RTI officer advises of an intention to reject the application in its requested format due to an unreasonable diversion of resources of the Office of the Minister and the Department to undertake the processing of the application. The RTI officer then provided an opportunity to vary the scope of the application.
21. In his letter to the Speaker, Minister Emerson stated that the notice of the decision relating to the request was made by a departmental RTI officer and not himself, and at the time that the question was asked, no formal decision by the RTI officer had been made.
22. In her submission to the committee, the Leader of the Opposition stated that, '... I had received notice of intention to refuse to deal with the application, with further advice that the delegate did not see any way to vary the application which would remove grounds for refusal. However, at that stage the application had not formally been refused, so I would also like to clarify that was the case.'
23. The Leader of the Opposition stated in her letter to the Speaker that the, '[RTI Officer] ... provide[d] my office with the opportunity to vary the scope of the application, an invitation my office has since kindly declined' and that it '... was not possible to vary the application in the manner suggested'.
24. Although a formal decision to refuse access to the Minister's diary in the form that was requested was imminent after declining the invitation to vary the scope of the application, it was not technically correct at the time the question was asked to state that the Minister had refused to release details of his diary.
25. On the face of the material before the committee, the committee considers the Leader of the Opposition's statement that, 'the transport minister, unlike other ministers, is refusing to release details of his diary and the people he has met with', contains factually incorrect matter.

Were any of the Leader of the Opposition's statements misleading?

26. In her letter to the Speaker, the Leader of the Opposition stated that, "As this would not have satisfied the purpose of having made the application, it was not possible to vary the application in the manner suggested. As this was the only way [the RTI officer] envisaged of being able to deal with the application, it was not misleading for me to say that the 'Minister, unlike other Ministers, is refusing to release details of his diary and the people he has met with.'"
27. The Leader of the Opposition further stated that, 'the Right to Information applications that had been received by the other Ministers had been processed and dealt with in that format, and their diaries had been released in their entirety, subject to personal details being redacted. The Transport Minister had, therefore, refused to release the details of his diary in the way the other Ministers had.'

28. The committee considers that on the one hand, it could be argued that a reasonable person fully informed would not be misled by the statement as the anticipated outcome of the RTI application process was such that the Minister would not supply copies of his diary entries.
29. On the other hand, it could be argued that a reasonable person fully informed might have been misled by the Leader of the Opposition's statement as technically, no actual refusal had been given at the time the statement was made.
30. A more technically correct description of the situation at the time the question was asked would be that the Leader of the Opposition had received a notification from the department of an intention to refuse to deal with the application (for the Minister's diary entries between 4 April and 15 October 2012) in its current format due to an unreasonable diversion of resources on the Office of the Minister and the Department.
31. On the face of the information before the committee, the committee considers it remains arguable as to whether a reasonable person could be misled by the Leader of the Opposition's statement that the 'transport minister, unlike other ministers, is refusing to release details of his diary and the people he has met with'.

If yes, did the Leader of the Opposition know at the time the statements were made that they were misleading and was it the Leader of the Opposition's intention to mislead the House?

32. The Leader of the Opposition stated that, 'My statement... cannot be said to be false or misleading, and certainly not intentionally so. I honestly believed the statement to be true, because the refusal to deal with the application in its current form was unlike the way in which other Ministers had responded to the RTI application.'
33. 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.
34. 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.⁸
35. Minister Emerson stated in his submission to the committee that '... it is also clear that her remarks were carefully considered and scripted before question time had begun with the intent of misleading the House. Ms Palaszczuk's statements were premeditated and not off the cuff... With [the RTI Officer's] letter readily available, it is not unreasonable to conclude that Ms Palaszczuk intended to mislead the House with her statement.'
36. In her submission to the committee, the Leader of the Opposition concludes by stating that, 'I did not at any time intend to mislead the House' and that 'whilst I acknowledge that certain intricacies of language may have been lost by expressing these concepts in this way, I did not, in making this statement, intend to mislead the House.'
37. The committee notes that the Leader of the Opposition made the statement and tabled the letter whilst asking a question without notice of the Premier. It could be assumed therefore, that the wording of the question may have been prepared in advance. Making a statement in this context may count towards an intention to mislead the House.

⁸ McGee, David, *Parliamentary Privilege in New Zealand*, third edition, Dunmore Publishing Ltd, Wellington, 2005, at 654.

38. However, on the other hand the committee acknowledges that the Standing Orders⁹ require questions without notice to be brief and not contain lengthy preambles which might explain the departure from the more technically correct but longer explanation of the situation.
39. Regardless, on the face of the information before the committee the committee finds that, there is no compelling evidence to suggest that the Leader of the Opposition intended to mislead the House.

Conclusions

40. On the information before the committee, the committee finds that the Leader of the Opposition's statement contained factually incorrect matter, however considers that it remains arguable as to whether a reasonable person could have been misled by the statement.
41. The committee finds on the face of the material before it that there is no compelling evidence to suggest that the Leader of the Opposition intended to mislead the House.
42. The committee echoes the sentiments of its predecessor committees, specifically the Members' Ethics and Parliamentary Privileges Committee in its Report No. 35:¹⁰

... 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.

43. 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 making inaccurate and potentially misleading statements in the House.

⁹ Standing Order 115.

¹⁰ 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.

Conclusion 1

On the information before the committee, the committee finds that the Leader of the Opposition's statement contained factually incorrect matter, however considers it remains arguable as to whether 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 Leader of the Opposition 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 making inaccurate and potentially misleading statements in the House.

Recommendation 3

The committee recommends that the Leader of the Opposition correct the record at the next opportunity and clarify that there was no formal refusal of the Right to Information application at the time the statement was made in the House.

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

Peter Dowling MP
Chair

April 2013

Membership — 54th Parliament

Mr Peter Dowling MP, Chair
Member for Redlands

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

Mr Ian Berry MP¹¹
Member for Ipswich

Mr Ian Kaye MP
Member for Greenslopes

Mr Michael Pucci MP¹²
Member for Logan

Mr Curtis Pitt MP¹³
Member for Mulgrave

Ms Jackie Trad MP
Member for South Brisbane

Mr Peter Wellington MP
Member for Nicklin

Secretariat

Mr Michael Ries, *Research Director*

Ms Erin Pasley, *Principal Research Officer*

Ms Andrea Musch, *Executive Secretary*

Ms Tamara Vitale, *Acting Executive Secretary*

Contact

Telephone: 07 3406 7586

Facsimile: 07 3406 7691

E-mail: ethics@parliament.qld.gov.au

Internet: www.parliament.qld.gov.au/ethics

¹¹ Until 12 February 2013.

¹² From 12 February 2013.

¹³ 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.