



## ETHICS COMMITTEE

### Report No. 137

*Matter of privilege referred by the Speaker on 8 August 2013 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.<sup>1</sup> 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 Bundamba, Mrs Jo-Ann Miller MP, that the member for Mudgeeraba, Ms Ros Bates MP, deliberately misled the House by way of statements made between March and June 2013 regarding her status as a registered nurse.
4. In accordance with Standing Order 269, the member for Bundamba wrote to the Speaker on 26 June 2013 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 for Mudgeeraba regarding the complaint. The Speaker subsequently received correspondence from the member for Mudgeeraba on 17 July 2013 and 30 July 2013.
6. On 8 August 2013, after examining the information before her, the Speaker referred the matter to the committee for its consideration.

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<sup>1</sup> S.104B *Parliament of Queensland Act 2001*.

7. The committee invited both parties to provide a submission to the committee. The committee received a submission from the member for Mudgeeraba on 5 September 2013. No additional information was received from the member for Bundamba.

### ***The referral***

8. Upon referring the matter to the committee on 8 August 2013, the Speaker made the following statement in the House:

*Honourable members, on 26 June 2013 the member for Bundamba wrote to me alleging that the member for Mudgeeraba deliberately misled the House by way of four statements made between March and June 2013 regarding her status as a registered nurse. The member's complaint was that the member for Mudgeeraba deliberately misled the House during the various proceedings when she referred to herself with the protected title of 'registered nurse', notwithstanding that her registration had lapsed in July of the previous year. The member for Mudgeeraba has provided correspondence in relation to this, including correspondence from the Australian Health Practitioner Regulation Agency which indicates that they are satisfied that the member did not intend to mislead the public. However, this advice is irrelevant to the matter in question which is in relation to an allegation of misleading the House.*

*When it is alleged that a member has committed the contempt of deliberately misleading the House, there are three elements that must be established. First, the statement must be misleading. Secondly, it must be established that the member making the statement knew at the time the statement was made that it was incorrect. Thirdly, in making it the member must have intended to mislead the House. On the material presented to me, the first element has been established and there is some evidence to support both the second and third elements. Accordingly, I have decided to refer the matter to the Ethics Committee. In doing so I wish to emphasise that referral is not a determination of guilt but that the threshold for referral has been met under criteria set out in standing orders. I remind members that standing order 271 now applies and members should not refer to this matter in the House.<sup>2</sup>*

### ***Committee Membership***

9. On 19 August 2013, 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 20 August 2013, the Speaker advised the committee in accordance with Standing Order 272(2), that the member for Rockhampton, Mr Bill Byrne MP would replace the member for Bundamba during consideration of this matter.

### ***The allegation***

11. The allegation by the member for Bundamba relates to statements made in the House by the member for Mudgeeraba between March and June 2013 regarding the member's status as a registered nurse.
12. The relevant statements were made on 6 June 2013; 5 June 2013; 23 May 2013; and 21 March 2013 as set out below.

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<sup>2</sup> Queensland Legislative Assembly, Record of Proceedings (Hansard), 8 August 2013, at 2562.

## The statements

13. Statement made by the member for Mudgeeraba on 6 June 2013 during cognate debate of the Appropriation (Parliament) Bill 2013, Appropriation Bill 2013 and the Revenue Amendment and Trade and Investment Queensland Bill 2013:

*As a healthcare professional and **registered nurse**, this additional funding will go a long way to ensuring that people in my electorate have access to first-class health and disability service.*<sup>3</sup> (Emphasis added).

14. Statement made by the member for Mudgeeraba on 5 June 2013 during debate on the Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013:

*As a **registered nurse**, I obviously know many nurses*<sup>4</sup> (emphasis added).

15. Statement made by the member for Mudgeeraba on 23 May 2013 in response to a motion to take note of Report No. 22 of the Health and Community Services Committee:

*As a **registered nurse**, I took a keen interest in aspects of this report.*<sup>5</sup> (Emphasis added).

16. Statement made by the member for Mudgeeraba on 21 March 2013 during debate on the Health Practitioner Registration and Other Legislation Amendment Bill 2013:

*As a **registered nurse** of some 30 years, it was a long time coming that we had harmonisation across the states for the registration of nurses.*<sup>6</sup> (Emphasis added).

## **Definition of contempt**

17. 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**

18. 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.<sup>7</sup>
19. 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

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<sup>3</sup> Queensland Legislative Assembly, Record of Proceedings (Hansard), 6 June 2013, at 2151.

<sup>4</sup> Queensland Legislative Assembly, Record of Proceedings (Hansard), 5 June 2013, at 1984.

<sup>5</sup> Queensland Legislative Assembly, Record of Proceedings (Hansard), 23 May 2013, at 1781.

<sup>6</sup> Queensland Legislative Assembly, Record of Proceedings (Hansard), 21 March 2013, at 864.

<sup>7</sup> Standing Order 266(2).

- thirdly, in making it, the member must have intended to mislead the House.<sup>8</sup>
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.<sup>9</sup>

***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 the member for Mudgeeraba's submission to the committee. Copies of this material are attached to the Report.
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; and
  - (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 member for Bundamba alleges in her letter to the Speaker that the statements made by the member for Mudgeeraba regarding her status as a registered nurse are '*patently untrue*'<sup>10</sup> and refers to an article in the Courier-Mail dated 17 June 2013 which states '*Ms Bates said her registration had lapsed last year but admitted she had continued to use the title*'.<sup>11</sup>
25. The fact that the member's registration lapsed is not in dispute. In her letter to the Speaker dated 17 July 2013, the member for Mudgeeraba provided a copy of an email she sent to the journalist of the said article in the Courier Mail which confirms that she let her registration lapse in July 2012.
26. The member for Mudgeeraba submitted that her statements made on 21 March 2013 and 23 May 2013 were framed in the past tense and therefore did not refer to her current registration status. The committee considers that argument has some support by the wording used in the statement made on 21 March 2013, but is less convinced with respect to the 23 May 2013 statement.
27. On the face of the material before the committee, the committee considers that at least two of the four statements, if not all, contained factually incorrect material.

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<sup>8</sup> McGee, David, *Parliamentary Privilege in New Zealand*, third edition, Dunmore Publishing Ltd, Wellington, 2005, at 654-655.

<sup>9</sup> Note 8, at 654.

<sup>10</sup> Letter from Mrs Miller to the Speaker dated 26 June 2013, at 2.

<sup>11</sup> 'Bates nurses more bruises', *Courier Mail*, 17 June 2013, at 15.

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

28. The committee accepts that while it is arguable as to whether all of the four statements by the member were factually incorrect that there is authority for technically factually correct statements to still be misleading.
29. 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>12</sup>
30. Furthermore, 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.'<sup>13</sup>
31. With respect to this matter, the committee is of the view that a reasonable person fully informed having heard each of the four statements made by the Member for Mudgeeraba could have been misled into thinking that the Member held a current registration as a nurse.

### ***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?***

32. There is evidence before the committee that establishes that the member for Mudgeeraba had known her registration had lapsed in July 2012.
33. In addition, the committee notes that the use of a protected title (such as 'registered nurse') is prohibited under legislation and attracts a maximum individual penalty of \$30,000. This would indicate that such usage is not taken lightly – a fact which is also borne out by correspondence between the Member for Mudgeeraba and Australian Health Practitioner Regulation Agency (AHPRA) dated 30 July 2013 provided to the committee by the Member.
34. In light of the fact that the member for Mudgeeraba was for a very long period until relatively recently (mid 2012) qualified to be a registered nurse, and that there are restrictions on the use of the title the committee finds that the member for Mudgeeraba should have known that at the time she made the statements that they could have been misleading.
35. As mentioned above, previous ethics committees, and David 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. As a general proposition, remarks made off the cuff in debate will rarely fall into the category of deliberate misleading.<sup>14</sup>
37. In support of her allegation that the member for Mudgeeraba intended to mislead the House, the member for Bundamba emphasises that the statements were not made in the heat of the moment, or as an off the cuff remark:

*They were all made during either a motion to adopt a Committee report, or during debate of various pieces of legislation. ...*

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<sup>12</sup> 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.

<sup>13</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>14</sup> Note 8.

...

*It would be reasonable to infer that these statements were made by the member, knowing them to be false, in order to impress upon the Parliament that, as a registered nurse, the member for Mudgeeraba had a greater in-depth knowledge of the matters of which she spoke than other members, and that the member had some degree of clinical authority to speak on these matters. She therefore intended to mislead the House.*<sup>15</sup>

38. In her submission to the committee, the member for Mudgeeraba states that '*it was not [her] intention to mislead the House*' and that '*in all of these instances I was referring to the qualifications I hold as a nurse, which I continue to hold not my state of registration at the time.*'<sup>16</sup>

39. This was reiterated in a statement the member for Mudgeeraba made in the House on 6 August 2013:

*... I state that my reference to registered nurse was referring to the fact that I had been a registered nurse for some 30 years prior and that I was currently eligible to be registered as same. It was in no way a representation of my registration or not. Regardless, this is a ludicrous claim. I do not need to fraudulently enhance my standing in this regard.*

...

*On each occasion I was referring to my extensive experience and the qualifications I have held from time to time. ...*<sup>17</sup>

40. Having considered the information before the committee, the committee finds that, on balance, there is no clear evidence to suggest that the member for Mudgeeraba intended to mislead the House.

41. However, in considering this matter the committee reiterates the views previously expressed in Report No. 130 that members have a duty to uphold high standards of behaviour and refrain from acting recklessly by making unqualified statements.

42. The committee notes that the Member for Mudgeeraba acknowledged that had she taken wiser counsel, her words would have been chosen more judiciously.<sup>18</sup>

43. It is also noted that subsequent to the allegation being made by the member for Bundamba, the member changed her website to read 'as a former Registered General Nurse'.<sup>19</sup>

44. The committee also notes that the Member for Mudgeeraba is reported in the press to have offered to correct the parliamentary record and refer to herself as a former registered nurse,<sup>20</sup> The committee considers that in making a statement to the House on this matter on 6 August 2013 the Member did not offer an unqualified correction of the record or demonstrate any contrition for potentially misleading the House. The committee can only speculate that had the member done so the matter may very well may not have had to be considered by the committee.

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<sup>15</sup> Letter from Mrs Miller to the Speaker dated 26 June 2013, at 4.

<sup>16</sup> Letter from Ms Bates to the committee dated 5 September 2013 at 8; Letter from Ms Bates to the Speaker dated 17 July 2013 at 2.

<sup>17</sup> Queensland Legislative Assembly, Record of Proceedings (Hansard), 6 August 2013, at 2282-2283.

<sup>18</sup> Letter from Ms Bates to the Speaker dated 17 July 2013 at 2 and 4; Letter from Ms Bates to the committee dated 5 September 2013 at 5 and 7.

<sup>19</sup> Letter from Ms Bates to the committee dated 5 September 2013 at 8.

<sup>20</sup> Note 13.

## **Conclusion**

45. On the information before the committee, the committee finds that:
  - (a) the member's statement contained factually incorrect matter and in that context a reasonable person could have been misled by some of the statements; and
  - (b) there is evidence to suggest that the member knew at the time of making those statements that they were incorrect; and
  - (c) however, there is no clear evidence to indicate that the member intended to mislead the House.
46. Accordingly, the committee finds that there is no breach of privilege or contempt in this matter.
47. The committee echoes the sentiments of its predecessor committees, specifically the Members' Ethics and Parliamentary Privileges Committee in its Report No. 35:<sup>21</sup>

*...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.*
48. This committee will continue 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.
49. The committee therefore finds that it would be appropriate for the Member for Mudgeeraba to make a statement in the House:
  - (a) confirming that she was not a registered nurse at the time she made the relevant statements in the House;
  - (b) clarifying that the statements in question were not intended to convey her current state of registration;
  - (c) acknowledging that she knows the use of the title 'registered nurse' is protected;
  - (d) acknowledging her duty as a member of the House to uphold high standards of behaviour which includes ensuring the accuracy of statements she makes in the House; and
  - (e) apologising to the House if her statements were misleading.
50. The committee also reminds all members to ensure the accuracy of their statements in the House and if required to correct the record as soon as possible.

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<sup>21</sup> 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 there is evidence to suggest that the member's statements were factually incorrect and misleading.

**Conclusion 2**

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

**Recommendation 1**

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

**Recommendation 2**

That the Member for Mudgeeraba at the next opportunity make a statement in the House:

- (a) confirming that she was not a registered nurse at the time she made the relevant statements in the House;
- (b) clarifying that the statements in question were not intended to convey her current state of registration;
- (c) acknowledging that she knows the use of the title 'registered nurse' is protected;
- (d) acknowledging her duty as a member of the House to uphold high standards of behaviour which includes ensuring the accuracy of statements she makes in the House; and
- (e) apologising to the House if her statements were misleading.

**Recommendation 3**

The committee reminds members to ensure the accuracy of their statements in the House and that the committee will continue to hold members to a high standard of behaviour when considering all future matters referred to it.



Michael Crandon MP  
**Chair**

October 2013



### **Membership — 54<sup>th</sup> Parliament**

Mr Michael Crandon MP, Chair  
*Member for Redlands*

Mrs Jo-Ann Miller MP, Deputy Chair<sup>22</sup>  
*Member for Bundamba*

Mr Ian Kaye MP  
*Member for Greenslopes*

Mr Michael Pucci MP  
*Member for Logan*

Ms Jackie Trad MP  
*Member for South Brisbane*

Mr Peter Wellington MP  
*Member for Nicklin*

Mr Bill Byrne MP<sup>23</sup>  
*Member for Rockhampton*

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<sup>22</sup> On 19 August 2013, 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)

<sup>23</sup> On 20 August 2013, the Speaker advised the committee that the member for Rockhampton, Mr Bill Byrne MP, would replace the member for Bundamba during consideration of this matter in accordance with Standing Order 272(2).