

## ETHICS COMMITTEE

### REPORT NO. 151

#### MATTERS OF PRIVILEGE REFERRED BY THE SPEAKER ON 8 AND 15 MAY 2014 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 PQQA 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 Logan, Mr Michael Pucci MP, that the member for Bundamba, Mrs Jo-Ann Miller MP, deliberately misled the House on two separate occasions in relation to the employment of a Mr Michael Kitzelmann at the Logan Electorate Office during:
  - an adjournment debate speech on 13 February 2014; and
  - the debate on the Crime and Misconduct and Other Legislation Amendment Bill on 7 May 2014.
4. In accordance with Standing Order 269, the Member for Logan wrote to the Speaker on 19 March 2014 asking that the Speaker refer the matter in relation to the Member for Bundamba's statements in the House on 13 February 2014 to the committee. On 8 May 2014, the Speaker referred this matter to the committee for its consideration.
5. On 12 May 2014, the Member for Logan wrote to the Speaker, in accordance with Standing Order 269, asking that the Speaker refer the matter in relation to the Member for Bundamba's statement in the House on 7 May 2014 to the committee. The Speaker referred this matter to the committee on 15 May 2014.

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

### **The referral**

6. Upon referring the Member for Bundamba's statement on 13 February 2014 to the committee on 8 May 2014, the Speaker stated in the House:

*Honourable members, on 19 March 2014 the member for Logan wrote to me alleging that the member for Bundamba deliberately misled the House on 13 February 2014 by claiming that the member had unlawfully employed someone in 2012 and that his actions had been investigated by the Clerk and were the subject of a referral to the CMC. The member for Logan rose in the House at the time to state that the comments were untrue and offensive. The member for Bundamba withdrew offensive comments but then restated the accusation relating to the member for Logan. When raising the matter of privilege, the member for Logan identified that it is the Clerk of the Parliament who is the employer of staff and provided evidence that the Clerk did not consider the employment of the staff member to be unlawful.*

*Given the prima facie evidence provided to me, I have decided to refer the matter to the Ethics Committee for their investigation. I remind all members that standing order 271 now applies to the matter.<sup>2</sup>*

7. In her letter to the committee of 15 May 2014 referring the Member for Bundamba's statement on 7 May 2014 to the committee, the Speaker made the following comments:

*On Monday 12 May, I received further correspondence from the Member for Logan about a different yet related matter, alleging the Member for Bundamba misled the House in statements made on the evening of 7 May 2014.*

*The statements made by the Member for Bundamba, read in conjunction with previously supplied correspondence from the Clerk of the Parliament to the Member for Logan, provides prima facie evidence that the Member for Bundamba may have misled Parliament. I refer this matter for your related consideration.<sup>3</sup>*

### **Committee Membership**

8. On 15 May 2014, the Member for Logan advised the Speaker of his intention to stand down from the committee for the consideration of this matter, in accordance with Standing Order 272(1).
9. On 19 May 2014, the Speaker advised the committee that the Member for Murrumba, Mr Reg Gulley MP, would replace the Member for Logan during the committee's consideration of this matter, in accordance with Standing Order 272(2).
10. On 20 May 2014, the Member for Bundamba advised the Speaker of her intention to stand down from the committee for the consideration of this matter, in accordance with Standing Order 272(1).
11. On 21 May 2014, the Speaker advised the committee that the Member for Redcliffe, Mrs Yvette D'Ath MP, would replace the Member for Bundamba during the committee's consideration of this matter, in accordance with Standing Order 272(2).

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<sup>2</sup> Queensland Legislative Assembly, Record of Proceedings (Hansard), 8 May 2014, p.1408.

<sup>3</sup> Letter from Madam Speaker to the Chair of the Ethics Committee dated 15 May 2014, p.1.

### Committee process

12. The committee invited both parties to provide a submission to the committee. The committee received a submission from the Member for Logan on 2 June 2014 and a submission from the Member for Bundamba on 24 June 2014.
13. On 28 August 2014, the committee held a private hearing during which the committee heard evidence from the Member for Bundamba. At the private hearing, the Member for Bundamba took two questions on notice. On 1 September 2014 the Research Director emailed the Member for Bundamba the questions taken on notice. On 5 September 2014, the Member for Bundamba provided her response to the questions taken on notice.

### The allegations

14. The Member for Logan's allegations relate to the Member for Bundamba's statements made during an adjournment debate speech on 13 February 2014 and the debate on 7 May 2014 on the Crime and Misconduct and Other Legislation Amendment Bill.
15. On 13 February 2014, the Member for Bundamba stated:

*Have no doubt at all that the LNP look after their own, and they especially look after former LNP candidates. Members may recall that Michael Kitzelmann ran for the LNP in Bundamba at the 2012 state election, and he lost. He spent many months campaigning after he accepted a VER from the Department of Premier and Cabinet prior to the election. The agreement on the separation from a department by VER means that a public servant cannot be considered for a public sector job for three years following the date of separation. Members may also recall that Michael Kitzelmann lobbied up just weeks after the election unlawfully employed by the LNP member for Logan, Mr Michael Pucci, and that this was referred to the CMC—*
16. At this point, the Member for Logan raised a point of order, stating that he found the Member's comments offensive because they were not true, and asked them to be withdrawn. The Speaker requested that the Member for Bundamba withdraw her comments.
17. The Member for Bundamba stated:

*I withdraw. This was referred to the CMC, and an investigation was also undertaken by the Clerk of this parliament. Mr Kitzelmann embarrassed the LNP in this House and left the employment of the parliament almost immediately.<sup>4</sup>*
18. On 7 May 2014, the Member for Bundamba stated:

*I have been threatened during the election campaign by an LNP candidate, Michael Kitzelmann, whom I referred to the CMC and he was then sacked.<sup>5</sup>*
19. The Member for Logan alleges that these statements are misleading as:
  - the Parliamentary Service, not Members of Parliament, employ electorate officers;
  - Mr Kitzelmann's employment at the Logan Electorate Office was not unlawful;
  - the Member for Logan's actions were not referred to the Crime and Misconduct Commission (CMC); and
  - Mr Kitzelmann resigned from the position at the Logan Electorate Office and was not sacked.

<sup>4</sup> Queensland Legislative Assembly, Record of Proceedings (Hansard), 13 February 2014, p.289.

<sup>5</sup> Queensland Legislative Assembly, Record of Proceedings (Hansard), 7 May 2014, p.1361.

**Definition of contempt**

20. 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**

21. 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>6</sup>
22. 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.<sup>7</sup>
23. 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>8</sup>
24. 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>9</sup>
25. 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.<sup>10</sup>

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<sup>6</sup> Standing Order 266(2).

<sup>7</sup> McGee, David, *Parliamentary Privilege in New Zealand*, third edition, Dunmore Publishing Ltd, Wellington, 2005, p. 653-654.

<sup>8</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, p.10.

<sup>9</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, p.25.

<sup>10</sup> McGee, David, *Parliamentary Privilege in New Zealand*, third edition, Dunmore Publishing Ltd, Wellington, 2005, p. 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, p. 2.

## ***Establishing a prima facie case of possible contempt***

26. 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.
27. The committee found that it had sufficient material before it to deliberate on the matter. This material included: correspondence, including supporting evidence, provided to the Speaker; supplementary submissions from the parties to the committee and evidence heard at the private hearing of the committee on 28 August 2014.
28. The issues to be resolved in establishing whether the allegation, on the face of it, gives rise to a contempt are:
  - 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?***

### Statement that Mr Kitzelmann was unlawfully employed by the Member for Logan

29. The committee considered two issues when determining whether the statement, "that Michael Kitzelmann lobbied up just weeks after the election unlawfully employed by the LNP member for Logan, Mr Michael Pucci" is factually incorrect. Those issues are did the Member for Logan employ Mr Kitzelmann and was the Member for Logan's employment of Mr Kitzelmann unlawful.
30. It is not disputed that electorate office staff are appointed by the Parliamentary Service, on the recommendation of the relevant Member of Parliament.
31. In her submission to the committee, the Member for Bundamba accepted that Mr Kitzelmann was technically employed by the Parliamentary Service, rather than the Member for Logan. The Member for Bundamba, however, stated that:
 

*Whilst technically, the employment is undertaken by the Parliamentary Service, for all intents and purposes the employment is undertaken, in fact, by the Member.*
32. In support of her argument, the Member for Bundamba referred to the requirements, outlined in the Electorate Office Staff Employment Form, for the relevant Member to certify that they have:
  - interviewed the prospective employee;
  - reviewed the prospective employee's resume; and
  - carried out referee checks.
33. In Mrs Miller's response to questions taken on notice at the hearing, she stated:<sup>11</sup>

*Every member of the Parliament has recommended the employment of electorate officers to the Clerk and, barring any legal impediment to their employment, those persons have been employed. As the Clerk has advised, 'practically we all understand that my engagement of electorate staff is at the recommendation of the MP'.*

<sup>11</sup> Mrs Miller's answers to Questions Taken on Notice, 5 September 2014, p.3.

*If the Committee were to ask any member of the Parliament or in fact themselves, whether they, in the ordinary course, refer to the staff employed in their electorate office as 'my electorate officer', or whether they always refer to them as 'the electorate officer employed by the Queensland Parliamentary Service', the response will dispose of the issue.*

34. The Member for Bundamba contended that her statement that Mr Kitzelmann was "employed by the LNP member for Logan" was "merely a short-hand way of saying 'Mr Kitzelmann was employed by the Parliamentary Service on the recommendation of the LNP member for Logan'".
35. In her submission to the committee, the Member for Bundamba invited the committee to give her statement its practical meaning and to treat it as "mere puffery".
36. Prior to his employment at the Logan Electorate Office, Mr Kitzelmann had left the employment of the Queensland Public Service under the Voluntary Separation Program (VSP).
37. The committee understands that as part of a VSP package, Mr Kitzelmann would have signed a Deed undertaking not to seek, apply for, accept engagement or perform any work for a Queensland Government Entity for a three year period. The Parliamentary Service is considered a Queensland Government Entity for this purpose.
38. The Member for Bundamba, in her submission, stated that she considers that Mr Kitzelmann's employment at the Logan Electorate Office was unlawful because he was employed by the Parliamentary Service in breach of his VSP Deed.
39. In her answers to questions taken on notice at the hearing, Mrs Miller stated:<sup>12</sup>

*I did not use the term 'illegally'. This has quite a different meaning, and would denote that the employment was in breach of some criminal law or other statutory duty or obligation. By using of [sic] the term 'unlawfully', I sought to classify the employment of Mr Kitzelmann in the Logan Electorate Office as being subject to some sanction at law, but falling short of what could be described as 'illegal'. At the time I made the statement in the House on 13 February 2014 I believed, and I still believe, that Mr Kitzelmann was 'unlawfully' employed.*
40. The Member for Bundamba acknowledged that whilst employment in breach of the Deed will not result in any statutory or criminal sanctions, the Member contended that it could be found to be a breach of contractual obligations, and as such be 'unlawful'. The Member for Bundamba asked the committee to note that she did not use the term 'illegal' which, in the Member's view, would denote a breach of statute or criminal law.
41. The Oxford online dictionary defines 'unlawful' as "not conforming or permitted by; or recognised by law or rules".<sup>13</sup>
42. On the face of the evidence before the committee, it appears that Mr Kitzelmann acted in breach of Clause 2.3 of the Deed in applying for, and accepting, the role of electorate officer at Logan. Accordingly, Mr Kitzelmann's breach of the Deed might fit the above definition of 'unlawful' in that it did not conform with the rules as set out and agreed to in the Deed.
43. The committee considers that had the Member for Bundamba made a statement along the lines of Mr Kitzelmann unlawfully gained employment at the Logan Electorate Office, then there probably would not have been a case to answer. However, the committee notes that this was not the statement made by the Member.

<sup>12</sup> Mrs Miller's answers to Questions Taken on Notice, 5 September 2014, pp.1-2.

<sup>13</sup> Oxford online dictionary, <http://www.oxforddictionaries.com/>, Oxford University Press, accessed at 18 September 2014.

44. The committee does not consider that the employment of Mr Kitzelmann by the Parliamentary Service was unlawful. In reaching this view, the committee notes that Mr Kitzelmann did not disclose to the Parliamentary Service that he had accepted a VSP package during the pre-employment process.
45. The committee does not, therefore, on the evidence before it, consider that the Parliamentary Service's employment of Mr Kitzelmann was unlawful.
46. The committee considers, on the face of the material before it, that the Parliamentary Service employed Mr Kitzelmann at the Logan Electorate Office, not the Member for Logan, and that his employment by the Service was not, in the committee's view, technically unlawful.
47. Accordingly, the committee finds that the Member for Bundamba's statement "that Michael Kitzelmann lobbed up just weeks after the election unlawfully employed by the LNP member for Logan, Mr Michael Pucci" contains factually incorrect material.

Statement that the matter was referred to the CMC

48. The Member for Logan alleges that the Member for Bundamba deliberately misled the House by stating that his actions in relation to Mr Kitzelmann's employment were referred to the CMC.
49. The Member for Bundamba refutes this allegation. In her submission, the Member for Bundamba stated that "At no time did I allege any wrongdoing on the part of the member for Logan in this respect" and "I did not allege that I had referred Mr Pucci's actions to the CMC."
50. On this point, Mrs Miller states in her answers to questions taken on notice at the hearing:<sup>14</sup>

*I did not say that the actions of Mr Pucci were unlawful. It was my intention to convey the notion that the entirety of the situation, including Mr Kitzelmann seeking employment in breach of the Deed, and his being so employed by Mr Pucci, which I said had been referred to the CMC.*

51. It is not disputed that the circumstances surrounding Mr Kitzelmann's employment at the Logan Electorate Office were referred to the Crime and Misconduct Commission (CMC). At the private hearing, the Member for Bundamba tabled a letter from the CMC. The letter referred to the Member for Bundamba raising concerns about the conduct of Mr Kitzelmann and the Member for Logan with the CMC.<sup>15</sup>
52. In her answers to questions taken on notice at the hearing, Mrs Miller stated:<sup>16</sup>

*However, even if my words can be taken to mean that the actions of Mr Pucci had been referred to the CMC, which I refute, there is clear evidence that the CMC considers that the conduct of Mr Pucci had been referred to the CMC.*

*I refer to the letter of acknowledgment that I received from the CMC after receipt of my letter of complaint. It said: "Thank you for your letter of 29 May 2012 in which you have raised concerns about the conduct of Mr Michael Kitzelmann and Mr Michael Pucci, member for Logan." Therefore, it was clear that the CMC considered that the conduct of Mr Pucci had in fact been referred to the CMC.*

53. The Member for Bundamba made two statements in the House on 13 February 2014 which mentioned a referral to the CMC. First, the Member for Bundamba said:

*Members may also recall that Michael Kitzelmann lobbed up just weeks after the election unlawfully employed by the LNP member for Logan, Mr Michael Pucci, and that this was referred to the CMC ...*

<sup>14</sup> Mrs Miller's answers to Questions Taken on Notice, 5 September 2014, p.4.

<sup>15</sup> Queensland Legislative Assembly, Transcript of Proceedings (in camera), 28 August 2014, p.4.

<sup>16</sup> Mrs Miller's answers to Questions Taken on Notice, 5 September 2014, p.4.

54. The Member for Logan, at this point, raised a point of order, stating that he found the Member for Bundamba's comments offensive because they were untrue. The Speaker asked the Member for Bundamba to withdraw her comments. The Member withdrew her comments and stated that:

*This was referred to the CMC, and investigation was undertaken by the Clerk ...*

55. Despite the Member for Bundamba's statement that "I did not allege that I had referred Mr Pucci's actions to the CMC", it appears from the evidence provided to the committee by the Member for Bundamba that the Member did refer her concerns about the conduct of the Member for Logan to the CMC.
56. Accordingly, the committee considers that the Member for Bundamba's statement to the House that "*this was referred to the CMC*" did not contain factually incorrect matter, as the Member for Bundamba did refer her concerns about the conduct of the Member for Logan to the CMC.

### Statement that Mr Kitzelmann was sacked

57. The Member for Logan alleges that the Member for Bundamba deliberately misled the House on 7 May 2014 by stating that Mr Kitzelmann was sacked, when he resigned from his position at the Logan Electorate Office.
58. As with the other elements of the Member for Bundamba's statements, it is not disputed that Mr Kitzelmann resigned from his position, and was not sacked.
59. In her submission, the Member for Bundamba stated:

*To have referred to Mr Kitzelmann as having been 'sacked' is a mere puffery, in that the effect of Mr Kitzelmann's resignation was that his employment ceased, and he suffered a monetary penalty for the breach of the terms of the Deed. The practical effect of this is similar to having been sacked, and it is open to the Committee that my statement can be interpreted as meaning his actions had 'a similar effect to his having been sacked'.*

60. In her answers, dated 5 September 2014, to questions taken on notice, Mrs Miller states:<sup>17</sup>

*Clause 2.5 provides that employment in breach of that clause results in a right by the Government to immediately terminate that employment. None of this was disputed. The CMC had devolved the investigation back to the Clerk, and the Clerk had commenced the investigation. It was clear that, at the conclusion of the investigation, the Clerk would have no alternative but to terminate the employment of Mr Kitzelmann, and Mr Kitzelmann's resignation pre-empted an adverse finding by the Clerk, which was inevitable.*

*In all of the circumstance, I considered that the resignation was a 'constructive dismissal' of Mr Kitzelmann's contract of employment, as that would have been the action that the Clerk would be obliged to take. By resigning before the Clerk could take action to dismiss Mr Kitzelmann, Mr Kitzelmann avoided the consequences of his employment in breach of Clause 2.3 of the Deed...*

...

*I therefore believed, at the time I made the statement in the House on 7 May 2014, that 'sacked' was a correct way of describing what amounted to, as a question of fact, a 'constructive' dismissal or sacking of Mr Kitzelmann from his employment at the Logan Electorate Office.*

<sup>17</sup> Mrs Miller's answers to Questions Taken on Notice, 5 September 2014, pp.4-5.



61. The Oxford online dictionary defines 'sack' as the 'dismissal from employment'. The Oxford online dictionary also defines 'dismissal' as "the act of ordering or allowing someone to leave."<sup>18</sup>
62. Mrs Miller contends, in her submission, the interpretation of the term 'sacked' is to include 'constructive dismissal'. Effectively, her submission is that Mr Kitzelmann was 'sacked' because he was 'allowed to leave'.
63. Nonetheless, the committee is of the view that the common use of the term 'sacked' tends towards a connotation of a positive act of dismissal as opposed to a forced resignation.
64. The Ethics Committee of the 48th Parliament established the precedent that the term 'misleading' is wider than 'false' or 'incorrect'. Earlier Ethics Committees have considered it possible that a technically factually correct statement could also be misleading, by the deliberate omission of relevant information. It is suggested that such circumstances might be in existence in this matter.
65. Despite the Member's contention that her statement was 'mere puffery', or included reference to a 'constructive dismissal', on material before it, the committee considers that the Member for Bundamba's statement that Mr Kitzelmann was "sacked" included factually incorrect matter.

***Were any of the Member's statements misleading?***

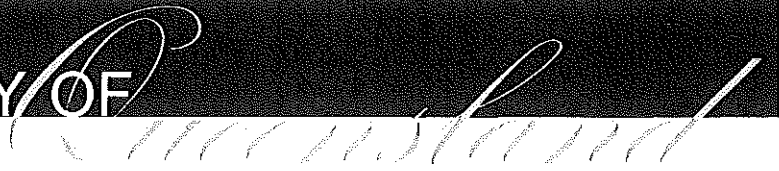
66. The test in relation to this element is whether a reasonable person on hearing the Member's statements could have been misled.
67. The committee considers that on the evidence before it, a reasonable person on hearing the Member for Bundamba's statements in the House on 13 February 2014 and 7 May 2014 might have been misled into believing that:
  - the Member for Logan employed Mr Kitzelmann directly;
  - the Member for Logan's employment of Mr Kitzelmann was unlawful; and
  - Mr Kitzelmann had been dismissed from his position at the Logan Electorate Office, rather than resigning.

***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?***

68. The Member for Logan alleged that the Member for Bundamba's statements were a deliberate attempt to mislead the House, as on several occasions the Member has made related false claims and accusations concerning Mr Kitzelmann's employment and resignation at the Logan Electorate Office.
69. In her submission, the Member for Bundamba stated that she does not consider her statements on 13 February 2014 and 7 May 2014 were misleading, however, should the committee consider that they were, then it is the Member's submission that she did not believe her statements to be misleading at the time she made them.
70. As mentioned above, previous ethics committees, and 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.

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<sup>18</sup> Oxford online dictionary, <http://www.oxforddictionaries.com/>, Oxford University Press, accessed at 18 September 2014.



71. 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.<sup>19</sup>
72. 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 of personal explanation) a presumption of an intention to mislead the House will more readily arise.<sup>20</sup>

Statement that Mr Kitzelmann was unlawfully employed by the Member for Logan

73. The committee notes that the Member for Bundamba has personal knowledge of the appointment process and employment status of electorate officers, as a former electorate officer and longstanding Member of the Parliament (first elected in 2000).
74. The Member for Bundamba also accepted, in her submission, that technically Mr Kitzelmann was employed by the Parliamentary Service on the recommendation of the Member for Logan.
75. In her submission, however, the Member for Bundamba stated that, at the time, she made her statement on 13 February 2014 she was of the view "... that, for all intents and purposes, Mr Kitzelmann had been employed by Mr Pucci." Mrs Miller confirmed this view in the hearing and her response to questions taken on notice at the hearing.<sup>21</sup>
76. The Member for Bundamba also stated that "I was of the firm view, at that time [when making her statement on 13 February 2014] and I continue to be, that Mr Kitzelmann has been 'unlawfully employed' in the Logan Electorate Office."
77. The Member for Logan alleged that the Member for Bundamba's comments on 13 February 2014 were "clearly intentional" given that he had raised a point of order stating that her statements were offensive as they were untrue and the Member, after withdrawing, repeated the accusations.
78. The Member for Bundamba informed the committee that her withdrawal of her statements on 13 February 2014 was not an admission that they were untrue, but rather was on the basis that the Member for Logan found them offensive and after the Speaker asked her to withdraw her comments under Standing Order 234.
79. The committee considers that it is arguable that the Member's submission, in particular her acceptance that Mr Kitzelmann was technically employed by the Parliamentary Service, is evidence of some degree of recklessness in her statement at the time the Member made the statement.
80. The committee considers, however, that it is arguable that, at the time of making her statement, the Member for Bundamba believed that Mr Kitzelmann's employment had an element of unlawfulness to it, and that it was unlawful in a general, if not a technical, sense.
81. The committee found insufficient evidence that the Member for Bundamba intended to mislead the House in making her statement.

Statement that Mr Kitzelmann was sacked

82. The Member for Logan alleged that the Member for Bundamba knew, at the time of making the following statement on 7 May 2014, that it was incorrect and misleading:

<sup>19</sup> McGee, David, *Parliamentary Privilege in New Zealand*, third edition, Dunmore Publishing Ltd, Wellington, 2005, at 654.

<sup>20</sup> *Ibid.*

<sup>21</sup> Mrs Miller's answers to Questions Taken on Notice, 5 September 2014, pp.2-3.

*I have been threatened during the election campaign by an LNP candidate, Michael Kitzelmann, whom I referred to the CMC and he was then sacked.*

83. The Member for Logan stated that, as the complainant to the CMC, the Member for Bundamba must have been aware that Mr Kitzelmann had resigned, rather than been sacked.
84. The Member for Bundamba, in her submission, stated that:
 

*In using the term 'sacked', I did not intend to convey a precise legal meaning of the word; it was more a colloquial use of the terminology that conveyed the fact that the termination of employment was under such circumstances that, even though it was by resignation of Mr Kitzelmann, that resignation was 'forced' by the circumstances surrounding the investigation by the Clerk.<sup>22</sup>*
85. On this basis, the Member for Bundamba contends that at the time of making the statement that Mr Kitzelmann was sacked, she did not believe it to be incorrect.
86. The committee considers that there is evidence that the Member for Bundamba knew, at the time of making her statement on 7 May 2014, that Mr Kitzelmann had resigned rather than been sacked.
87. The committee notes that the Clerk of Parliament emailed the Member for Logan in relation to this matter on 24 February 2014. In his email to the Member for Logan, the Clerk states that:
 

*On 4 June 2012 Mr Kitzelmann tendered his resignation from the position at the Logan Electorate Office. I was of the view that Mr Kitzelmann's resignation was a satisfactory resolution of his situation and advised the CMC and the complainant accordingly.*
88. The committee understands that the complainant to the CMC referred to in the Clerk's email was the Member for Bundamba. Accordingly, the Member for Bundamba was made aware in June 2012 that Mr Kitzelmann had resigned.
89. The Member for Logan also stated that the Member for Bundamba's use of the term "... left the employment of the parliament", rather than "sacked" on 13 February 2014 is evidence that the Member for Bundamba knew that Mr Kitzelmann had not been sacked before making her statement on 7 May 2014.
90. Based on the material before it, the committee considers that there is evidence that the Member for Bundamba knew, at the time of making her statement that Mr Kitzelmann was sacked, that it was not correct in the precise legal meaning of the word.
91. The Member for Bundamba submitted that her statements were made during a "very heated and animated debate, concerning highly contentious subject matter". The Member stated that her statement falls into the category referred to by McGee which notes that remarks made off the cuff in debate can rarely fall into the category of deliberately misleading the House.
92. However, in her response to questions taken on notice at the hearing and committee deliberations, outlined in paragraphs 60-66 above, the Member for Bundamba indicates that the term 'sacked' can be technically taken to include situations where a person has been 'allowed to leave' such as may be the case with some resignations.
93. On the face of the information before the committee, the committee finds that there is some evidence that the Member knew at the time of making the statement that it was incorrect. That is, the Member for Bundamba was reckless in stating that Mr Kitzelmann was 'sacked' which was a potentially misleading term, given the Member for Bundamba had advice from the Clerk that Mr Kitzelmann had resigned. However, there is no compelling evidence to suggest that the Member for Bundamba intended to mislead the House.

<sup>22</sup> Mrs Miller's submission dated 24 June 2014, p. 7.

### Conclusions

94. On the information before the committee, it finds that:
- (a) the Member for Bundamba's statements contained factually and apparently incorrect matter, and in that context a reasonable person could have been misled by her statements on 13 February 2014 and 7 May 2014;
  - (b) there is no compelling evidence to suggest that, at the relevant time, the Member for Bundamba knew that her statements could, in substance, have been misleading; and
  - (c) therefore, on balance, there is insufficient evidence to indicate that the Member intended to mislead the House.
95. Accordingly, the committee finds that there is no breach of privilege or contempt in this matter.
96. In considering this matter and the alleged deliberate misleading of the House referred to in Report Nos. 129 and 130, the committee deliberated on the conduct of members in the House generally.
97. 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.
98. The committee echoes the sentiments of its predecessor committees, specifically the Members' Ethics and Parliamentary Privileges Committee in its Report No. 35:<sup>23</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.*
99. The Ethics Committee, in its Report No. 119 found recklessness in making unqualified statements deeply concerning.<sup>24</sup> The current committee also expresses a concern with an element of recklessness in the Members' statement that is the subject of this report.
100. 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.
101. This committee re-iterates its resolve to hold members to a high standard of behaviour. The committee considers that the preservation of high standards of behaviour is essential for protecting the institution of Parliament and its members.
102. The committee, therefore, finds that it would be appropriate for the Member for Bundamba to make a statement in the House apologising if her statements to the House on 13 February 2014 and 7 May 2014 were misleading.
103. The committee reminds all members of the duty to ensure the accuracy of their statements in the House and advises members who become aware of a possibility that they may have misled the House to make a statement in the House, as soon as practicable, to correct the record.

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<sup>23</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.

<sup>24</sup> 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.

104. The committee considers that this correction, is particularly important to avoid a perception, amongst the public, that members may be over-extending the boundaries of the important parliamentary privilege of freedom speech.

**Conclusion 1**

**On the information before the committee, the committee finds that it is arguable that the Member for Bundamba'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 Bundamba intended to mislead the House.**

**Conclusion 3**

**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.**

**Conclusion 4**

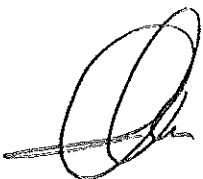
**The committee reminds all members of its intention to hold members to a high standard of behaviour when considering all future matters referred to it.**

**Recommendation 1**

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

**Recommendation 2**

**That the Member for Bundamba, at the next opportunity, make a statement in the House apologising if her statements were misleading.**



**Michael Crandon MP**  
**Chair**

October 2014

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

Mr Michael Crandon MP, Chair  
*Member for Coomera*

Mrs Jo-Ann Miller MP, Deputy Chair<sup>25</sup>  
*Member for Bundamba*

Mr Ian Kaye MP  
*Member for Greenslopes*

Mr Michael Pucci MP<sup>26</sup>  
*Member for Logan*

Ms Jackie Trad MP  
*Member for South Brisbane*

Mr Peter Wellington MP  
*Member for Nicklin*

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<sup>25</sup> On 21 May 2014, the Speaker advised the committee that the Member for Redcliffe would replace the Member for Bundamba during the committee's consideration of this matter, in accordance with Standing Order 272(2).

<sup>26</sup> On 19 May 2014, the Speaker advised the committee that the Member for Murrumba would replace the Member for Logan during the committee's consideration of this matter, in accordance with Standing Order 272(2)