



ETHICS COMMITTEE

REPORT NO. 152

MATTER OF PRIVILEGE REFERRED BY THE SPEAKER ON 28 AUGUST 2014 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 Member for Southport, Mr Rob Molhoek MP, that the Leader of the Opposition and Member for Inala, Ms Anastacia Palaszczuk MP deliberately misled the House on 5 June 2014 in a statement made during the budget reply speech.
4. In accordance with Standing Order 269, the Member wrote to the Speaker on 10 June 2014, 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 8 July 2014.
6. On 28 August 2014, after examining the information before her, the Speaker referred the matter to the committee for its consideration.

¹ S.104B *Parliament of Queensland Act 2001*.

7. The committee invited both parties to provide a supplementary submission to the committee. The committee received a submission from the Leader of the Opposition on 25 September 2014.

The referral

8. Upon referring the matter to the committee the Speaker made the following statement in the House:²

Honourable members, on 10 June 2014 the member for Southport wrote to me alleging that the Leader of the Opposition deliberately misled the House in statements made during the budget reply speech on 5 June 2014 when she stated—

I rise on behalf of the 20,000 workers who were sacked after being told their jobs were safe.

The member for Southport provided evidence which stated that the number of Public Service employees in the voluntary redundancy process was 9,200.

In accordance with standing order 269(5) I wrote requesting further information from the Leader of the Opposition, which was received on 8 July 2014. In response, the Leader of the Opposition provided evidence to me about workers being told that their jobs were safe by referring to reports of Premier Newman stating before the election that public servants had nothing to fear. The context provided by the Leader of the Opposition then indicated that the figures used were referring to Public Service employees. However, later in the Leader of the Opposition's evidence provided to me it is acknowledged that the figure of 20,000 was arrived at by including the opposition's own estimated changes to the workforce in other sectors outside of the Public Service. Thus, there is prima facie evidence of the statements being deliberately misleading.

The process of asking for a response allows members the opportunity to correct the record if they have been inadvertently misleading, and I note that members on both sides of the House have done so on occasion. There has been no correction, so I find that this requires further consideration by the committee. I will be referring this matter to the Ethics Committee.

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

² Queensland Legislative Assembly, *Parliamentary Debates (Hansard)*, 28 August 2014 at 2847.

³ Standing Order 266(2).

11. There are three elements to be established when it is alleged that a member has committed the contempt of deliberately misleading the House:
 - firstly, the statement must, in fact, have been misleading;
 - secondly, it must be established that the member making the statement knew at the time the statement was made that it was incorrect; and
 - thirdly, in making it, the member must have intended to mislead the House.⁴
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 a supplementary submission provided by the Leader of the Opposition 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.
 - Does the Leader of the Opposition's statement contain any apparent or proven factually incorrect matter?
 - Was the Leader of the Opposition's statement misleading?
 - (If yes), did the Leader of the Opposition know at the time the statement was made that it was 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.

Does the Leader of the Opposition's statement 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, 'I rise on behalf of the 20,000 workers who were sacked after being told their jobs were safe.'

19. In his letter to the Speaker, the Member for Southport states that:

Both the Premier and Treasurer have consistently and repeatedly reported numbers significantly less than those suggested by the Leader of the Opposition.

...

the maximum number of proposed redundancies was in fact less than 14,000, and that the actual number was even less as reported by the Treasurer on August 8 2013 at 9200.

20. In her initial submission, the Leader of the Opposition states:

This statement is based on the estimated job losses in Government Departments, Government Owned Businesses and the Opposition's best estimate of associated job losses from the substantial funding cuts....to Non-Government Organisations (NGOs) and Local Governments.

...

The 20,000 jobs being lost is based on a combination of details from a range of sources. These include government publications, such as the budget papers, Estimates hearings and reasonable analyses of information available in the public arena (which has been required because of the government's continued refusal to provide detailed answers to specific Opposition questions relating to job losses).

...the Opposition has reached the conclusion that at least 20,000 jobs have been lost through an aggregation of the following information:

- *Public service job losses: 15,000 approx (2014-15 budget papers)*
- *Energex job losses: 460 (2013 Estimates)*
- *Ergon job losses: 690 (2013 Estimates)*
- *Powerlink job losses: 63 (2013 Estimates)*
- *Queensland Rail job losses: 500 (ABC media report)*
- *Community sector job losses: 1660 – 2770 (budget; QON 368; award)*
- *Reduced infrastructure spend job losses: 4630 (budget papers)*

TOTAL: 23,003-24,113 jobs lost

21. The Leader of the Opposition provided a supplementary submission which also addressed this issue. In her supplementary submission, the Leader of the Opposition, outlines a primary and secondary method for calculating job losses in the public service. The first method used by the Leader of the Opposition arrives at a figure of 21,419. The secondary method used arrives at a figure of 19,679. The Leader of the Opposition states:

...it is my submission to the committee that according to all methods that can be used to calculate the total number of "workers" who lost their jobs, my statements were accurate. They could not, therefore, be misleading.

22. The committee in examining the information before it found that there was a conflict in views or opinions with respect to the method of calculation for job losses. The committee was mindful that it was not the role of the committee to determine the most appropriate method for calculation of job losses but whether the statement itself is factually incorrect.
23. On the face of the material before the committee, the committee considers it is arguable as to whether the Leader of the Opposition's statement that, 'i rise on behalf of the 20,000 workers who were sacked after being told their jobs were safe' contains factually incorrect matter, in the context of differing methods of calculation of job loss figures.

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

24. The committee considered that on one hand, given the previous debate around this issue has pertained to Department Public Servants, a reasonable person may have been forgiven for taking the statement to be referring to Queensland Departmental Public Servants only, and if so could have been misled by the statement.
25. However, the committee noted, on the other hand, there was nothing in the Leader of the Opposition's statement, 'i rise on behalf of the 20,000 workers who were sacked after being told their jobs were safe' to indicate that she was only referring to Queensland Departmental Public Servants.
26. Based on the information before the committee, the committee considers that element one has not been conclusively met.

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

27. The Member for Southport stated in his letter to the Speaker:

Both the Premier and Treasurer have consistently and repeatedly reported numbers significantly less than those suggested by the Leader of the Opposition. The Government budget papers have also clearly detailed the actual numbers. These numbers have been regularly referred to by both sides of Government in this Chamber on many occasions.

...

I have attached transcripts from Hansard which clearly provide information which contradicts her statement and proves unequivocally that she absolutely knew that the maximum number of proposed redundancies was in fact less than 14,000, and that the actual number was even less as reported by the Treasurer on August 8 2013 at 9200.

Clearly the leader of the Opposition is fully aware that redundancies proposed by the Government were significantly less than the 20000 she referred to in her budget reply speech of June 5 2014.

28. The Leader of the Opposition stated in her initial submission to the committee:

If..., a conclusion is reached that the statement made in the House was misleading, I further contend that at the time it was made, I did not know that it was incorrect.

As I have outlined in detail above, the figure is based on information available from several sources in the public arena, including budget papers and the evidence given at Estimates hearings. This information has been collated in good faith to provide a more detailed assessment of job losses across the Queensland economy as a result of government decisions

29. In her supplementary submission, the Leader of the Opposition states:

To support his allegations, the Member for Southport relies on the contents of just three sources of information: two speeches to the House by the Treasurer and a response to a Question on Notice by the Premier.

As I have outlined in the extensive summary provided in table 1, establishing the full extent of job losses across the public sector since March 2012 is not contained in just one or a few documents.

My statement to the House is supported by the collation of information from numerous sources...

It is my submission to the committee that on the evidence provided in table 1, and the lack of evidence provided by the Member for Southport, that the member has been unable to satisfactorily establish the second element.

30. 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.
31. On the material before the committee, the committee finds that both the Member for Southport and the Leader of the Opposition are relying on different methods of calculating figures for job losses and accordingly, the Leader of the Opposition lacked the required "knowledge" of the statement being incorrect, in order to meet the second element.
32. For completeness, the committee considered the third element, as to whether the Leader of the Opposition intended to mislead the House.
33. The committee noted that the Member for Southport does not provide any additional evidence that the Leader of the Opposition intended to mislead the House on 5 June 2014 beyond his assertion that the Leader of the Opposition knew at the time that her statement was incorrect.
34. In her supplementary submission to the committee, the Leader of the Opposition stated:

I believed the statement to be true, and had reasonable grounds for so believing. It is my continued assertion that the statement I made was not factually untrue or misleading, and that I did not believe it to be misleading. However, if this is not accepted, I give my assurance to the committee that it certainly was not my intention to mislead the House.

I refer the committee to a ruling by Madam Speaker on 13 February 2013, which I believe applies to this matter. The ruling was in relation to an allegation by the Education Minister that the Deputy Leader of the Opposition deliberately misled the House. The Speaker stated in her ruling that:

In considering this matter, it is apparent that both the minister and the member for Mackay are presenting sets of facts in order to make claims and counterclaims. I consider this is part of the normal business of parliamentary debate which enables members to prosecute such cases. I have therefore considered that this is a matter of debate where different aspects of an argument are being presented and is not a matter where the member is deliberately misleading the House.

It is my submission that this matter is another situation where the Member for Southport has presented one set of facts and I have presented an alternative set of facts by way of counterclaim to the member's allegation. This is, as the Speaker has pointed out previously, part of the normal business of parliamentary debate where members present different aspects of an argument.

35. As a matter of logic, if the committee were to find the Leader of the Opposition knew at the time the statement was made that it would be misleading then there is a strong presumption of an intent to mislead the House as is required to satisfy the third element.
36. However, on the face of the information before the committee, the committee finds that, the requisite knowledge element has not been met, and there is no evidence to suggest that the Leader of the Opposition intended to mislead the House.

Conclusions

37. On the information before the committee, the committee finds that it is arguable as to whether the Leader of the Opposition's statement contained factually incorrect matter, in the context of differing methods of calculation of job loss figures.
38. However, the committee finds that there was not enough evidence to conclusively find that the Leader of the Opposition's statement was misleading.
39. On the material before the committee, the committee also finds that as both the Member for Southport and the Leader of the Opposition were relying on different methods of calculation of figures for job losses and accordingly, the Leader of the Opposition lacks the required "knowledge" of the statement being incorrect.
40. 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.
41. The committee echoes the sentiments of its predecessor committees, specifically the Members' Ethics and Parliamentary Privileges Committee in its Report No. 35:⁸
... 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.
42. 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.

⁸ 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

- (a) it is arguable as to whether the Leader of the Opposition's statement contained factually incorrect matter, in the context of differing methods of calculating job loss figures;
- (b) there is not enough evidence to conclusively find the Leader of the Opposition's statement was misleading; and
- (c) 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.

Committee Comment

The committee 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.



Michael Crandon MP
Chair

October 2014

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