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Paper to be presented by Hon Curtis Pitt MP, Speaker of the Legislative Assembly Queensland

Balancing freedom of speech with modern social and legal standards

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Article 9 of the Bill of Rights 1688 (UK), which applies to the Queensland Parliament, enshrines the most important provision relating to parliamentary privilege—freedom of speech and debates of the Parliament.[1] The article provides that speeches, debates or other proceedings in Parliament cannot be impeached or questioned in any court or place out of Parliament.

One of the effects of Article 9 is to ensure that words spoken in the Parliament cannot be used as the basis for legal proceedings. Therefore, for example, a person cannot use words spoken in Parliament as a basis for defamation proceedings.

The article does not, however, provide complete immunity to Members for what they say in the House. This is because the protection only applies to protect impeachment in "any court or place out of Parliament".

Deliberately misleading

The Legislative Assembly itself can inquire into a Member's statements in the House. In particular, the House has always possessed the power to punish for any deliberate misleading of the House as a contempt. Indeed, there have been two instances of members being found guilty of this contempt and being punished accordingly.

In Ethics Committee Report No. 35, "Report on a Matter of Privilege — A Member Making Deliberately Misleading Statement in a "Dissenting Report", the Member for Ipswich West, Mr Jack Paff was found to have committed contempt of the House by making a deliberately misleading statement in a "Dissenting Report" tabled on 11 March 1999. After giving the member the opportunity to respond in his place, the House found the member guilty of contempt and the ordered:

- That the Member be admonished for his conduct, and that the Speaker on behalf of the House deliver the admonishment to the member standing in his place; and

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[1] Section 9 of the Constitution of Queensland Act 2001 provides:

> *Powers, rights and immunities of Legislative Assembly*
> *(1)The powers, rights and immunities of the Legislative Assembly and its members and committees are—*
> *(a)the powers, rights and immunities defined under an Act; and*
> *(b)until defined under an Act—the powers, rights and immunities, by custom, statute or otherwise, of the Commons House of Parliament of the United Kingdom and its members and committees at the establishment of the Commonwealth.*
> *Note—*
> *Date of establishment of the Commonwealth—1 January 1901.*
> *(2)In this section—*
> *rights includes privileges.*

Section 8 of the Parliament of Queensland Act 2001 provides:

> *Assembly proceedings can not be impeached or questioned*
> *(1)The freedom of speech and debates or proceedings in the Assembly can not be impeached or questioned in any court or place out of the Assembly.*
> *(2)To remove doubt, it is declared that subsection (1) is intended to have the same effect as article 9 of the Bill of Rights (1688) had in relation to the Assembly immediately before the commencement of the subsection.*

- That the Member, after admonishment, be suspended from the services and the precincts of the House for 21 days.

In 2013 the Ethics Committee, in its Report No. 139 found that that the former Member for Redcliffe had failed to register interests in the Register of Members' Interest and Register of Related Persons' Interest and deliberately misled the House about the matters.

The Ethics Committee found that the former Member for Redcliffe was required to register 14 different interests in the Register of Members' Interest and Register of Related Persons' Interest on 48 occasions. The committee concluded that the former Member for Redcliffe knowingly failed to register the 14 interests in the appropriate timeframe, and had therefore committed a contempt of Parliament. The committee recommended:

- no penalty be imposed in relation to two counts on the basis that the former Member for Redcliffe took steps to rectify the situation prior to the allegation being made;
- a fine of $1,000 in relation to four counts of contempt related to the Register of Related Persons' Interest on the basis that no steps were taken by the former Member for Redcliffe to rectify the situation even after he took steps to declare his own role in an organisation; and
- a fine of $2,000 be imposed in relation to 42 counts of contempt on the basis that they were significant and the House should follow the precedent in the matters relating to the former Member for Sandgate (see above) to reflect the gravity of each offence and to send a strong message to Members and the public about the level of accountability expected of Members of Parliament.

The Ethics Committee also considered the cumulative effect of the findings of contempt, including the contempt of deliberately misleading the House. The Ethics Committee concluded that the House retained the power to expel a member by virtue of its link to the UK House of Commons. The Ethics Committee recommended that the former Member for Redcliffe be expelled from the House in order to protect the honour and dignity of the House and that the seat of Redcliffe be declared vacant.

The former Member for Redcliffe subsequently resigned as a Member of Parliament. The former member was then called to address the House from the Bar on 21 November 2013 to explain his actions. The former Member for Redcliffe was provided with 45 minutes to address the House from the Bar. The House passed a motion to accept the Ethics Committee's recommendations and the former member was fined $90,000. The House also endorsed the Ethics Committee finding that the cumulative effect of the conduct would warrant expulsion from the Legislative Assembly.

Unfortunately, allegations of deliberately misleading the House have become part of the tactics used by members. This led to the following Speaker's statement on 6 March 2018 early in my tenure as Speaker, where I laid out the requirements for complaints of privilege:

SPEAKER'S STATEMENTS

Matters of Privilege

Mr SPEAKER: Honourable members, it is clear that complaints against members for deliberately misleading the House have been misused by both sides of the

House in recent parliaments. Speakers do not refer trivial or unimportant matters, but the time and resources taken in assessing matters can be wasteful. I am informed that in the 55th Parliament there were 87 complaints of contempt made to Speaker Wellington. The make-up of these complaints was as follows: deliberately misleading the House, 75; deliberately misleading a committee, one; threatening and intimidating a member, three; unauthorised disclosure of committee proceedings, one; false or misleading account of proceedings before the House, two; misuse or contravention of the broadcast terms and conditions, four; publicly naming and releasing confidential information, one; and one instance where the contempt was not clearly defined.

Speaker Wellington dismissed 83 matters and referred four matters to the Ethics Committee. Of the 83 matters dismissed, the reasons included that members had apologised and corrected the record or that the matter was trivial. Standing order 269 provides the procedure for raising a matter of privilege and states that, with the exception of matters suddenly arising, a member must write to the Speaker. Standing order 269(3) further provides that—

A member must formulate as precisely as possible the matter, and where a contempt is alleged, enough particulars so as to give any person against whom it is made a full opportunity to respond to the allegation.

Honourable members, I wish to make my policy on such matters very clear. Firstly, the correspondence should be directed to the Speaker. I will not accept a cc'd letter as a complaint. Secondly, the standing orders require members in their correspondence to provide particulars. Thirdly, in the case of allegations of deliberately misleading the House, which is the most common issue raised by members, I expect sufficient particulars of not only the allegedly deliberately misleading statements but also particulars of the evidence against which an allegation is to be judged. The letter should provide clear analysis demonstrating that any statements made were not only misleading but also deliberately misleading. Standing order 269(5) permits the Speaker in considering a matter to request further information from the complainant. I advise members that I will not hesitate in writing back to members requesting further particulars. Alternatively, any correspondence not providing sufficient evidence may be simply dismissed by me without further action.

Lastly, I note that on occasions members may inadvertently mislead the House. Early correction of the record would alleviate many complaints. The Code of Ethical Standards gives the following guidance—

Members may sometimes make incorrect or misleading statements in the House without actually intending to mislead the House. Recklessness by a member resulting in incorrect or misleading statements to the House is in itself a serious matter. Members have a duty to correct the official record in the House as soon as it becomes apparent that their statements were incorrect or could be misleading.

I would like to state that my statement led to self-restraint by members in seeking to refer other Members for deliberately misleading the House. Alas, I find myself in no different position to the previous Speaker in this regard, having to regularly assess an increasing number of such complaints with few having any substance.

Inaccurate statements – correction of the record

In more recent years, there has been an ethical obligation placed on Members to correct any statements made if those statements are inaccurate. One of my predecessors stated that "In a cynical world, truth in parliament has never been more important".[2]

Since the late 1990s, following the establishment of the adoption of the Members' Code of Ethical Standards, there has been an emphasis on ensuring the correctness of statements made in the Assembly and its committees and correcting the record if any misstatement is made. Part 3.7.2.3 of the Code of Ethical Conduct states—

> *Members may sometimes make incorrect or misleading statements in the House without actually intending to mislead the House. Recklessness by a member resulting in incorrect or misleading statements to the House is in itself a serious matter. Members have a duty to correct the official record in the House as soon as it becomes apparent that their statements were incorrect or could be misleading.*

The Code of Ethical Standards contains an ethical framework for members by providing an overview of current obligations which members are bound to observe. It contains a statement of fundamental principles, but these are not themselves enforceable but are aspirational. The general principles, laws or precedents of parliamentary privilege and contempt still apply and are the litmus test of whether a matter of privilege is involved.

Standing order 269(4) requires the Speaker in considering whether a matter should be referred to the Ethics Committee to take into account whether an adequate apology or explanation has been made in respect of the matter.

Speakers have actively encouraged members to correct the record, apologise or clarify their incorrect or misleading statements so as to avoid any referral of matters to the Ethics Committee.

I think I speak for all of my predecessors when I state that Speakers would generally prefer to not refer matters to the Ethics Committee, but the maintenance of standards is important. If members who make incorrect or misleading statements in the House or committee refuse to correct the record, then they sometimes leave Speakers with little choice but to refer those matters to the committee.

General parliamentary law and practice

There are a vast array of impediments within parliamentary law and practice to statements made by members: *sub judice*, that is the prohibition on mentioning matters before the criminal courts; the rule prohibiting unparliamentary language; the prohibition on reflections upon the judiciary and the Governor; and the rule allowing members who feel (subjective test) that another member has personally reflected upon them to seek a withdrawal of the remarks.

[2] Speaker Wellington 15 September 2019 at p 3543 of the Record of Proceedings

The deficiencies

Serious allegations

There are multitude of agencies available for members to refer serious allegations for proper investigation, including the Queensland Police Service, the Crime and Corruption Commission, the Auditor-General, the Ombudsman and many other independent agencies.

I have a concern that on occasions, although relatively rare, Members simply come into the Assembly and repeat serious allegations, whereas Members should consider referring matters to an appropriate agency before making serious allegations public in the Assembly, especially if the evidentiary basis for the claims are weak.

In my view Members have a duty to ensure that serious allegations are of substance and undertake due diligence to ensure themselves of the veracity of such allegations. It is my belief that to turn a blind eye to the veracity of allegations simply to take political advantage of them is not in accordance with the spirit the Code of Ethical Standards.

Of course if a member knows an allegation is incorrect, then the member is deliberately misleading the Assembly.

But what about if a member simply suspects the veracity of the allegation is weak but nonetheless pushes on to make the allegations in the Assembly are later found to be unsubstantiated? Is a citizen's right of reply the only appropriate remedy in such circumstances? Should the member have more than a moral duty to correct the record and apologise to those harmed by the initial revelations in the Assembly?

Modern social and legal standards

Unfair discrimination, sexual harassment, vilification, and victimisation are unlawful in Queensland, under the *Anti-Discrimination Act 1991*. Complaints about this type of conduct may be lodged with the Human rights Commission.

The *Anti-Discrimination Act* prohibits discrimination on the basis of the following attributes:

- sex
- relationship status
- pregnancy
- parental status
- breastfeeding
- age
- race
- impairment
- religious belief or religious activity
- political belief or activity
- trade union activity
- lawful sexual activity
- gender identity
- sexuality
- family responsibilities

•association with, or relation to, a person identified on the basis of any of these attributes.

The Act also prohibits:

- sexual harassment, any unwelcome conduct of a sexual nature that is done either to offend, humiliate or intimidate another person, or where it is reasonable to expect the person might feel that way. It includes uninvited physical intimacy such as touching in a sexual way, uninvited sexual propositions, and remarks with sexual connotations.

- victimisation, when someone is treated badly because they:
    - refused to do something that would contravene the Anti-Discrimination Act;
    - complained about something that is unlawful under the Act; or
    - were involved in another person's complaint under the Act.

- vilification - a public act or statement that incites hatred towards, severe ridicule of, or serious contempt for a person or a group of people because of their race, religion, sexuality or gender identity. There are two tiers of vilification under the Act: unlawful vilification, which is a civil matter, and serious vilification, which is a criminal offence.

The Act also makes the following conduct unlawful:

•requesting or encouraging a contravention of the Act;
•requesting unnecessary information;
•discriminatory advertising.

The Act defines certain areas where discrimination on any of the attributes above is unlawful. These are:

•work (including applying for a job, or doing work experience);
•education;
•the provision of goods and services, superannuation or insurance;
•accommodation;
•disposition of land;
•club memberships and affairs;
•administration of state laws and programs;
•local government, between members.

As noted above, parliamentary law and practice prohibits unparliamentary language and Standing Orders enable members who feel (subjective test) that another member has personally reflected upon them to seek a withdrawal of the remarks. What is unparliamentary language and what is disorderly conduct is largely in the subjective discretion of the Chair. There is little doubt that comments that are discriminatory, or amount to harassment, vilification, and victimisation can also sometimes amount to unparliamentary language and/or disorderly conduct. However, the remedy is usually the requirement to withdraw the remarks or, at worst, warning for disorderly conduct.

Are our rules sufficient to deal with members who make remarks that would otherwise be unlawful and discriminatory in a modern community? Do we as parliaments need to have more teeth around such conduct if we wish to retain our immunity from the general law?