

Chapter 29 A Citizen's Right of Reply

Since 1996, the Legislative Assembly has passed resolutions establishing a procedure for persons to have a right of reply when they are adversely mentioned within the House.¹ The resolutions provide that, if a person or corporation is referred to in the Assembly by name or in such a way that they can be readily identified, and if the person considers that they have been adversely affected by that reference, that person may write to the Speaker to request that their response be published in *Hansard*.

If the request appears to be appropriate, the Speaker will refer the matter to the Standing Orders and Procedure Committee. This committee then gives more detailed consideration to the request to ensure that it is a sufficiently serious matter and that it is not frivolous, vexatious or offensive. In doing so the committee may meet with the person making the request or the member concerned. The committee then reports to the House and recommends whether or not a response should be published. If the House agrees to publish the response, it is incorporated into *Hansard*.² Throughout this process, neither the Speaker nor the committee may consider or judge the truth of any allegations made or of the response of the person concerned.

The response must be succinct and strictly relevant to the comments made in the House and must not contain anything offensive or unreasonably adversely affecting a person or invading their privacy.

The citizens' right of reply does not affect members' freedom of speech in Parliament and they still have full and absolute parliamentary privilege for what they say in the House. The right of reply gives a citizen or corporation subject to allegations under that privilege an opportunity to have a response to those allegations published in the record of the forum in which they were made.

The "right of reply" is not an automatic right to have a response published but a procedure by which a person may seek this remedy. This is to ensure that the Parliament is not abused and to preserve the principle that only persons who are elected as representatives of the people should be able to speak in Parliament.

It should be noted that while publication of a citizen's right of reply in *Hansard* would attract Parliamentary privilege the status of the submission to the Speaker is untested by the courts and may only attract qualified privilege under the law of defamation (i.e. privileged only if it was published in the absence of malice). The Legislative Assembly resolution prohibits publishing a response, which would unreasonably adversely affect a person.

In November 2006 an amendment to the citizens' right of reply procedure was introduced. Persons are now required to make a request for a right of reply within 6

¹ VP 27/11/1996, p. 694-5; VP 17/09/1997, p. 42-5; VP 25/05/1999, pp. 90-2; VP 08/09/1999, pp. 32-3; VP 26/02/2002, pp. 12-4; VP 22/05/2006, pp. 14-5; VP 08/05/2007, pp. 36-8.

² The House could authorise a response to be published but not incorporated in *Hansard* as the resolution adopted by the House states that it may be published by the Legislative Assembly or incorporated in *Hansard*.

months of the relevant comments being made in the Legislative Assembly, unless the applicant can show exceptional circumstances to explain the delay.³

The resolution providing for a citizen's right of reply for the 54th Parliament provides:

That during the current Parliament, unless otherwise ordered, the following Citizens' Right of Reply be adopted:

(1) That where a submission is made in writing to the Speaker by a person who has been referred to in the Legislative Assembly by name, or in such a way as to be readily identified:

- (a) claiming that the person or corporation has been adversely affected in reputation or in respect of dealings or associations with others, or injured in occupation, trade, office or financial credit, or that the person's privacy has been unreasonably invaded, by reason of that reference to the person or corporation; and
- (b) requesting that the person be able to incorporate an appropriate response in *Hansard*,

and the Speaker is satisfied:

- (c) that the subject of the submission is not so obviously trivial or the submission so frivolous, vexatious or offensive in character as to make it inappropriate that it be considered by the Standing Orders and Procedure Committee;
- (d) the submission was received within 6 months after the relevant comments were made in the House unless the applicant can show exceptional circumstances to explain the delay; and
- (e) that it is practicable for the Committee to consider the submission under this resolution,

the Speaker shall refer the submission to that Committee.

- (2) That the Committee may decide not to consider a submission referred to it under this resolution if the Committee considers that the subject of the submission is not sufficiently serious or the submission is frivolous, vexatious or offensive in character, and such a decision shall be reported to the Legislative Assembly.
- (3) That if the Committee decides to consider a submission under this resolution, the Committee may confer with the person who made the submission and any member who referred in the Legislative Assembly to that person or corporation.
- (4) That in considering a submission under this resolution, the Committee shall meet in private session.
- (5) The Committee shall not publish a submission referred to it under this resolution of its proceedings in relation to such a submission, but may present minutes of its proceedings and all or part of such submission to the Legislative Assembly.
- (6) In considering a submission under this resolution and reporting to the Legislative Assembly the Committee shall not consider or judge the truth of any statements made in the Legislative Assembly or the submission.

³ A similar requirement is made in other Houses of Parliament that have a right of reply procedure. For example the House of Representatives require a request for a right of reply to be received within 3 months of the remarks being made in the House and the procedure in the Victorian Legislative Assembly provides that the Privileges Committee does not have to consider a submission for a right of reply if it is received after 6 months of the remarks being made in the House and the applicant has not shown exceptional circumstances to explain the delay.

- (7) That in its report to the Legislative Assembly on a submission under this resolution, the Committee may make either of the following recommendations:
- (a) that no further action be taken by the Committee or the Legislative Assembly in relation to the submission; or
 - (b) that a response by the person who made the submission, in terms specified in the report and agreed to by the person or corporation and the Committee, be published by the Legislative Assembly or incorporated in *Hansard*, and shall not make any other recommendations.
- (8) That a document presented to the Legislative Assembly under paragraph (5) or (7):
- (a) in the case of a response by a person or corporation who made a submission, shall be succinct and strictly relevant to the questions in issue and shall not contain anything offensive in character; and
 - (b) shall not contain any matter the publication of which would have the effect of:
 - (i) unreasonably adversely affecting or injuring a person or corporation, or unreasonably invading a person's privacy, in the manner referred to in paragraph (1); or
 - (ii) unreasonably adding to or aggravating any such adverse effect, injury or invasion of privacy suffered by a person.
- (9) That a corporation making a submission under this resolution is required to make it under their common seal.

To date, the Legislative Assembly has received 21 requests for Citizens' Right of Reply. However, only one has met the criteria as passed by the House in its resolution for the Speaker to refer the matter to the Standing Orders and Procedure Committee.⁴ For details of why the other 20 requests have not been referred to the Committee see table below.

Reason for Disallowance	Number of requests
Speech by member in the House predated the resolution of 27 November 1996.	3
The member's comments have been misrepresented by the claimant.	1
The member's comments did not cross the threshold "that the person or corporation had been adversely affected in reputation or in respect of dealings or associations with others, or injured in occupation".	1
Formal claim not made in terms of the resolution (i.e.: the person has not proved how they have been adversely affected, or is offensive in character).	11
Insufficient evidence provided to support claim.	4

⁴ The Committee considered a request for a right of reply received from Mr Gino Mandarino and concluded that no further action should be taken by the Committee or the Legislative Assembly. Mr Mandarino was not permitted a right of reply. See the report of the Legislative Assembly Standing Orders and Procedure Committee, *Citizens' Right of Reply: Mr G Mandarino*, September 2006.