



LEGISLATIVE COUNCIL



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Citizen's right of reply

Responding to Members' statements
in the House



CITIZEN'S RIGHT OF REPLY

Members of Parliament are protected from legal liability for all statements they make during proceedings in Parliament. This freedom of speech is guaranteed by the common law, the *Bill of Rights 1689*, and the *Defamation Act 1974*. It enables Members to debate and inquire into matters, without fear of interference.

A consequence of this freedom is that private citizens who are referred to by Members in the House have no right of legal redress if they consider that the statements made about them are untrue. However, the Legislative Council has adopted a procedure which permits a citizen in this position to request that a reply to the Member's statements be published in the parliamentary record. The procedure allows the citizen to seek to respond to the Member's allegations, and have a response included in the public record.

The procedure was first established by a resolution of the Legislative Council on 13 November 1997. It is now included within the Standing Orders adopted by the House in 2004. The main steps involved in the procedure are outlined below.

Right of reply procedure

The procedure is available to any person who claims to have been adversely affected by being named or identified by a Member in the Legislative Council. It is also available to a corporation, body corporate, or unincorporated association.

To use the procedure, a person must make a submission in writing to the President of the Legislative Council. The President considers the submission and decides whether it should be referred to the Legislative Council Privileges Committee for further consideration. A submission may not be appropriate for referral to the Committee if its subject matter is trivial, frivolous, vexatious or offensive in character.

The role of the Committee is to consider whether the submission should be published. To be suitable for publication, a submission:

- (b) must not contain anything offensive in character,
- (c) must not contain any matter where publication would have the effect of:
 - (i) unreasonably adversely affecting or injuring a person,
 - (ii) unreasonably adding to or aggravating any adverse effect, injury or invasion of privacy suffered by a person.
- (6) In this order, **person** includes an unincorporated association, a corporation and a body corporate.
- (7) A notice of motion to adopt a report from the Privileges Committee on a citizen's right of reply is:
 - (a) to be placed on the *Notice Paper* as business of the House for six sitting days after the giving of the notice of motion,
 - (b) if not dealt with within the six sitting days, the motion will be placed on the *Notice Paper* as general business.

- (2) Where the committee decides to consider a submission, the committee may confer with, but not take evidence from any person, including:
- (a) the person who made the submission, and
 - (b) any member who referred to the person in the House.
- (3) In considering any submission, the committee:
- (a) must meet in private,
 - (b) must not consider or judge the truth of any statements made in the House or in the submission,
 - (c) must not make public:
 - (i) any minutes of proceedings,
 - (ii) any evidence, or
 - (iii) any submissions, either in whole or in part, except in its report to the House.
- (4) In reporting to the House on a submission, the committee may recommend:
- (a) that no further action be taken by the House or by the committee in relation to the submission, or
 - (b) that a response by the person who made the submission, in a form of words agreed to by the person and the committee and specified in the report of the committee, be published in the Minutes of the Proceedings or incorporated in Hansard, and must not make any other recommendation.
- (5) Any response by a person who made a submission and which is included in a report to the House:
- (a) must be succinct and strictly relevant to the questions in issue,

- must be succinct and strictly relevant to the questions in issue,
- must not contain anything offensive in character, and
- must not contain anything in the publication of which could adversely affect a person or unreasonably invade a person's privacy.

The Committee does not inquire into or judge the truth of any statements made in the submission or in the House. This is because the purpose of the procedure is not to decide whether the Member's statements were correct, but simply to let the person respond.

Having considered the submission, the Committee makes a recommendation to the House as to whether or not the submission should be published. The Committee's recommendation is contained in a report, which is tabled in the House.

Publication of submissions

If the Committee recommends that a submission should be published, the recommendation only takes effect if the House agrees to the Committee's report. Usually, the House does not decide on this issue until six days after the report has been tabled. This gives Members of the House an opportunity to read and consider the report and the recommended submission.

If the House resolves to adopt the report, the submission is published in the *Minutes of Proceedings* or the *Hansard* of the day on which the resolution is passed.

Effect of publication of submissions

Where a submission is published in the *Minutes* or *Hansard*, the person who made the submission is absolutely protected from liability for any defamatory statements in the published submission. However, this absolute protection does not extend to the republication of the submission, or any part of it, whether orally or in writing.

Evidence given to committees

The right of reply procedure only applies to statements made about a person in the House. Where evidence adversely reflecting on a person is given in a committee, different procedures may be followed depending on the circumstances of the case. Where appropriate, the committee may give the person an opportunity to respond to the evidence, by written submission and appearance before the committee. Contact should be made with the relevant committee in the first instance.

Where to send submissions

Submissions seeking a citizen's right of reply should be sent to:

The President
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

For further information

For further information, or clarification of any aspect of the right of reply procedure, contact:

Ms Lynn Lovelock
Deputy Clerk and Clerk to the Legislative Council Privileges Committee
Legislative Council
Tel: 9230 2024
Fax: 9230 2761

Previous reports of the Privileges Committee dealing with citizen's rights of reply are available on Parliament's website: www.parliament.nsw.gov.au/committees.

Standing orders 202 and 203

202. Person referred to

- (1) Any person who has been referred to in the House by name, or in such a way as to be readily identified, may make a submission in writing to the President, on any one or more of the following grounds, claiming:
 - (a) that they have been adversely affected:
 - (i) in reputation,
 - (ii) in respect of dealings or associations with others,
 - (b) that they have been injured in occupation, trade, office or financial credit, or
 - (c) that their privacy has been unreasonably invaded, and requesting that they should be able to include an appropriate response in the parliamentary record.
- (2) Where a person makes a submission to the President, the President must, as soon as practicable, consider the submission and decide whether:
 - (a) to refer the submission to the Privileges Committee (referred to as "the Committee") for inquiry and report, or
 - (b) it is inappropriate to be considered by the Committee on the grounds that the subject matter of the submission is trivial, frivolous, vexatious or offensive in character.
- (3) The President must inform the person in writing of the decision.

203. Reference to committee

- (1) Where a submission is referred to the Committee, the Committee may decide not to consider a submission referred to it if, in the opinion of the Committee, the subject matter of the submission is not sufficiently serious or is frivolous, vexatious or offensive in character. The Committee must report its decision to the House.