

Privileges Committee

# **Citizen's Right of Reply**

(Professor Richard Henry)

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## How to contact the committee

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## **Terms of reference**

The inquiry was conducted in accordance with standing orders 202 and 203.

## Committee membership

The Hon Trevor Khan MLC	The Nationals	Chair
The Hon Amanda Fazio MLC	Australian Labor Party	Deputy Chair
The Hon David Clarke MLC	Liberal Party	
The Hon Jenny Gardiner MLC	The Nationals	
The Hon Natasha Maclaren-Jones MLC	Liberal Party	
Revd the Hon Fred Nile MLC	Christian Democratic Party (Fred Nile Group)	
The Hon Peter Primrose MLC	Australian Labor Party	

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## Report

- 1.1 Standing orders 202 and 203 of the Legislative Council provide a mechanism for a person who has been adversely referred to by a member of the Legislative Council in proceedings of the House to seek a right of reply through the incorporation of a response in *Hansard* or in the *Minutes of Proceedings*.
- 1.2 On 28 August 2014, the President of the Legislative Council, the Hon Don Harwin MLC, received a submission from Professor Richard Henry AM requesting the incorporation of a response under standing orders 202 and 203.
- 1.3 The submission referred to comments made by Dr John Kaye concerning Professor Henry during debate in the Council on various occasions in 2011, 2012 and 2013.<sup>1</sup> The President, having considered the submission under standing order 202(2), referred it to the Privileges Committee on 29 August 2014.
- 1.4 The committee met in private session on 18 September 2014, and decided, according to standing order 203, to consider the submission. The response, which the committee now recommends for incorporation in *Hansard*, has been agreed to by Professor Henry and the committee in accordance with standing order 203(4)(b).
- 1.5 The committee draws attention to standing order 203(3)(b) which requires that, in considering a submission seeking a citizen's right of reply, the committee must not consider or judge the truth of any statements made in the House or in the submission.
- 1.6 The committee recommends:

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### Recommendation 1

That a response by Professor Henry, in the terms specified at Appendix 1, as agreed to by Professor Henry and the committee, be incorporated in *Hansard*.

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The Hon Trevor Khan MLC  
Chair

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<sup>1</sup> *Hansard*, Legislative Council, 22 November 2011, pp 7531-7532; 2 May 2012, pp 10856-10858; 26 March 2015, p 19285.



## Appendix 1      **Reply to comments by Dr John Kaye MLC in the Legislative Council on various occasions in 2011, 2012 and 2013**

I make this response to statements made by Dr John Kaye on November 22, 2011, on May 2, 2012 and in March 2013. From August 2006 until my retirement in November 2012, I was the Deputy Vice-Chancellor (Academic) and Vice-President of the University of New South Wales (UNSW). I have a long history of service to the community as a medical practitioner, specialising in paediatrics, and have worked in the hospital and university sectors in Australia and overseas as a clinician, as an academic and an administrator. I obtained my medical degree from the University of Sydney and my research doctorate from the University of Newcastle. I was at the University of Newcastle from 1984-1997, initially as Senior Lecturer, then Associate Professor and Professor. I joined UNSW in 1997 as the Foundation John Beveridge Professor of Paediatrics. I was Head of School, then Senior Associate Dean and subsequently Acting Dean of the Faculty of Medicine, before being appointed as Acting Pro-Vice-Chancellor (Education and Quality Improvement) prior to the role as Deputy Vice-Chancellor (Academic). In 2007 I was awarded Membership of the Order of Australia for service to paediatric respiratory medicine as a clinician, researcher, educator and mentor, and serving in a range of roles with professional medical organisations. Currently I hold a number of unpaid positions, including Pro-Chancellor of UNSW, Director of Children's Cancer Institute, Trustee of Sydney Grammar School and Chair of the Board of the Centre for Social Impact.

During the course of my employment as Deputy Vice-Chancellor (Academic), I terminated the appointment of Dr Paul Barach during the probationary period of his employment at UNSW after a whistleblower had alerted me to inconsistencies in Dr Barach's curriculum vitae and in grant applications. I determined that Dr Barach was not the person that he claimed to be, with false claims that he had a PhD, false claims that he had been a Professor at two different universities and false claims that he had been the author of various publications. Dr Barach lost an appeal against his dismissal in Fair Work Australia and then lost an appeal to the Full Bench of FWA. He then launched action in the Supreme Court against UNSW, against me and against other individuals for unfair dismissal and for defamation. On a number of occasions, Dr Kaye made allegations about me that were false and were highly distressing to me and to my family. Because I was a defendant in a case, I was unable to respond to these attacks on me. The case has recently been finalised and I am now at liberty to correct the record.

On November 22, 2011, Dr John Kaye suggested that I was part of 'a corrupt and prejudiced environment of nepotism and retribution that has gripped the University of New South Wales'. He made the false claim that I was the key university officer who 'responded by sacking Dr Barach on trumped-up charges'. Further he made the false allegation that 'Senior academic managers, including Professor Richard Henry, acted to protect Associate Professor Andrew McIntosh when he should have been dismissed and subject to police investigation'. On May 2, 2012, he made further adverse and false comments about me, including that the reason that I dismissed Dr Barach was because I was 'deeply loyal to' the Vice-Chancellor and that I knew his wishes, 'even if he did not express them directly'. He also made the incorrect claim that I acted '[i]n contravention of University of New South Wales policies'. Dr Kaye made further speeches in support of Dr Barach in March 2013. Yet again, I was named and accused of sacking Dr Barach on 'completely trumped-up charges'.

Dr Barach has now written two letters which withdraw all his allegations and totally contradict the allegations made by Dr Kaye. The first is written by Dr Barach to the Chancellor of the University of New South Wales, Mr David Gonski. In that letter Dr Barach writes: 'During the period after my cessation of employment at UNSW, I made assertions within the pursuit of my claims and publicly including to journalists and Mr John Kaye MP, that I now know not to be true. I recognise that UNSW and the relevant individuals (in particular, Professor Fred Hilmer and Professor Richard Henry) have at all times strongly denied all of my allegations. I acknowledge that Professor Hilmer and Professor Henry and all other relevant UNSW staff have acted with propriety at all times. I unreservedly withdraw my allegations and apologise for any offence they caused'. The suggestions by Dr Kaye that I dismissed Dr Barach on trumped-up charges are not only absolutely false but have been denied by Dr Barach himself.

The second letter is written to Associate Professor Andrew McIntosh. Dr Barach also admits that, with regard to his allegations against Associate Professor McIntosh, Dr Barach 'made assertions within the pursuit of my claims and publicly including to journalists and Mr John Kaye MP that I now know not to be true'. He also acknowledges that Associate Professor McIntosh 'acted with propriety at all times' and Dr Barach unreservedly withdraws his allegations and apologises for any offence that they caused. The suggestion by Dr Kaye that I was acting to protect Associate Professor McIntosh is contradicted by Dr Barach. The overwhelming evidence is that not only did I not behave wrongly, not only did I not cover up anything but also that there was nothing to cover up.

This statement will correct the false claims against me recorded in Hansard.

## Appendix 2 Minutes

### Minutes No 39

Thursday 18 September 2014

Members' Lounge, Parliament House, Sydney, at 1.15 pm

#### 1. Members present

Mr Khan, *Chair*  
 Ms Fazio, *Deputy Chair*  
 Miss Gardiner  
 Mrs Maclaren-Jones  
 Mr Primrose  
 Revd Mr Nile

In attendance: Steven Reynolds, Stephen Frappell, Rebecca Main, Sarah Henderson.

#### 2. Apologies

Mr Clarke

#### 3. \*\*\*

#### 4. Correspondence

The Committee noted the following items of correspondence:

##### *Received*

- 29 August 2014 – Letter from the President to the Chair forwarding correspondence from Professor Richard Henry, former Deputy Vice Chancellor (Academic) of the University of New South Wales, requesting a right of reply.
- 12 September 2014 – Email from Jia Lee, Supreme Court of NSW, to the Clerk concerning Proceedings 2010/136384 in the Supreme Court.

#### 5. Citizen's right of reply - Professor Richard Henry

The Committee note the request for a right of reply.

The Committee deliberated.

Resolved, on the motion of Mr Primrose: That the Committee Chair write to the Registrar of the Supreme Court as to whether the correspondence cited by Professor Henry in his request for a right of reply has been made public by the Court.

#### 6. \*\*\*

#### 7. Adjournment

The Committee adjourned at 2.29 pm *sin die*.

Stephen Frappell

Clerk to the Committee

**Minutes No 40**

Thursday 23 October 2014

**Members' Lounge, Parliament House, Sydney, at 4.41 pm**

**1. Members present**

Mr Khan, *Chair*

Mr Clarke

Miss Gardiner

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Mr Primrose

Revd Mr Nile

In attendance: Steven Reynolds, Stephen Frappell, Rebecca Main, Velia Mignacca.

**2. Apologies**

Ms Fazio, Deputy Chair

Mrs Maclaren-Jones

**3. Correspondence**

The Committee noted the following item of correspondence:

*Sent*

- Letter dated 17 September 2014 from the Chair to the Registrar of the Supreme Court in relation to *Dr Paul Randall Barach v The University of New South Wales & Ors* (No 2010/136384).

**4. \*\*\***

**5. Next meeting**

Friday 31 October 2014 at 9.00 am.

**6. Adjournment**

The Committee adjourned at 5.02 pm until Friday 31 October 2014 at 9.00 am.

Stephen Frappell

**Clerk to the Committee**

**Minutes No 42**

Wednesday 5 November 2014

**Members' Lounge, Parliament House, Sydney, at 7.17 pm.**

**1. Members present**

Mr Khan, *Chair*

Ms Fazio, *Deputy Chair*

Mr Clarke

Miss Gardiner

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Mrs Maclaren-Jones

Mr Primrose

In attendance: Steven Reynolds, Stephen Frappell, Rebecca Main.

**2. Apologies**

Revd Mr Nile

**3. \*\*\***

**4. \*\*\***

**5. \*\*\***

**6. Correspondence**

The committee noted the following item of correspondence:

***Received***

- Email dated 4 November 2014 from the Acting Registrar of the Supreme Court of New South Wales in relation to the proceedings in the matter of *Dr Paul Randall Barach v The University of New South Wales & Ors* (No 2010/136384).

**7. Citizen's right of reply - Professor Richard Henry**

The Committee noted the correspondence from the Acting Registrar of the Supreme Court.

The Committee deliberated.

Resolved, on the motion of Mr Primrose: That the Committee Chair write to Professor Henry seeking further information on the status of the correspondence from Dr Barach.

**8. \*\*\***

**9. Adjournment**

The committee adjourned at 7.38 pm until noon on Tuesday, 11 November 2014.

Stephen Frappell

**Clerk to the Committee**

**Minutes No 43**

Tuesday 11 November 2014

**Rm 1136, Parliament House, Sydney, at 12.05 pm.**

**1. Members present**

Mr Khan, *Chair*

Ms Fazio, *Deputy Chair*

Mr Clarke

Miss Gardiner

\*\*\*

Mrs Maclaren-Jones

Revd Mr Nile

Mr Primrose

In attendance: Steven Reynolds, Stephen Frappell, Velia Mignacca.

2. \*\*\*

3. **Confirmation of minutes of previous meetings**

Resolved, on the motion of Ms Fazio: That minutes no. 42 be confirmed.

4. **Correspondence**

The committee noted the following item of correspondence:

*Sent*

- Letter dated 5 November 2014 from the Chair to Prof Richard Henry in relation to the status of items of correspondence referred to in his request for a right of reply.

\*\*\*

5. \*\*\*

6. **Adjournment**

The committee adjourned at 12.40 pm, *sine die*.

Stephen Frappell

**Clerk to the Committee**

**Draft Minutes No 44**

Thursday 13 November 2014

**Members' Lounge, Parliament House, Sydney, at 1.01 pm.**

1. **Members present**

Mr Khan, *Chair*

Miss Gardiner

Revd Mr Nile

Mr Primrose

In attendance: Steven Reynolds, Stephen Frappell, Rebecca Main, Velia Mignacca.

2. **Apologies**

Ms Fazio, Deputy Chair

Mr Clarke

Mrs Maclaren-Jones

3. **Confirmation of minutes of previous meetings**

Resolved, on the motion of Revd Mr Nile: That minutes no. 43 be confirmed.

4. **Correspondence**

The committee noted the following item of correspondence:

***Received***

- Letter dated 10 November 2014 from Prof Richard Henry to the Chair in relation to his request for a right of reply.

**5. Citizen's right of reply - Professor Richard Henry**

The Committee considered the Chair's draft report.

The report was read.

The Committee deliberated.

Resolved, on the motion of Mr Primrose:

1. That the Chair prepare and submit a draft report on the request for a citizen's right of reply by Prof Henry, recommending that a response by Prof Henry in a form of words agreed to by Prof Henry and the Committee be incorporated in Hansard.
2. That the report be adopted.
3. That the report be signed by the Chair and presented to the House.
4. That the Clerk advise Prof Henry and Dr Kaye of the proposed tabling of the report.

**6. Adjournment**

The committee adjourned at 1.03 pm, *sine die*.

Stephen Frappell

**Clerk to the Committee**