

Privileges Committee

Citizen's Right of Reply

(Dr Andrew McIntosh)

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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 Peter Primrose 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 Adam Searle 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 18 February 2015, the President of the Legislative Council, the Hon Don Harwin MLC, received a submission from Dr Andrew McIntosh 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 Dr McIntosh during debate in the Council on various occasions in 2011, 2012, 2013 and 2014.¹ The President, having considered the submission under standing order 202(2), referred it to the Privileges Committee on 25 February 2015.
- 1.4 The committee met in private session on 26 February 2015, 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 Dr McIntosh 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:

Recommendation 1

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

The Hon Trevor Khan MLC
Chair

¹ *Hansard*, Legislative Council, 22 November 2011, pp 7531-7532; 2 May 2012, pp 10854-10860; 25 March, pp 19215-19216; 26 March 2013, pp 19284-19287; 9 September 2014, pp 41-42.

Appendix 1 **Reply to comments by Dr John Kaye MLC in the Legislative Council on various occasions between 2011 and 2014**

I make this response to statements made by Dr John Kaye on 22 November 2011, 2 May 2012, 25 March 2013, 26 March 2013 and 9 September 2014 in the Legislative Council, relating to the termination of Dr Paul Barach's probationary employment in June 2009 at the University of New South Wales (UNSW), the Motion Analysis Service and my conduct at UNSW.

I am a graduate (Master of Biomedical Engineering and Doctor of Philosophy) and former employee of UNSW. I was employed as an academic at UNSW from 1996 until 2011 at the School of Risk and Safety Sciences (the School). I took redundancy when the School was closed. At that time I was an Associate Professor. As one of the many activities I undertook during my employment at UNSW, I helped establish the Motion Analysis Service (the Service) in 1997. The Service was a collaboration between hospitals, clinicians and the Biomechanics and Gait Laboratory (the Laboratory) that I directed. The Service and the Laboratory were two separate entities with an area of overlap in clinical gait analysis. The Service provided clinical gait analysis for children in New South Wales and contributed to their clinical management. Biomechanical analysis of gait was one of many activities undertaken in the Laboratory; others included biomechanics and ergonomics research in safety areas, eg. transport, sport and work, human movement research, and teaching.

Dr Kaye made numerous allegations in the Legislative Council that were grossly false and highly injurious to others and me. Until recently I was unable to respond to Dr Kaye's allegations because I was a defendant in a case brought against UNSW and six defendants, including me, in the Supreme Court by Dr Paul Barach. That case has been finalised and the proceedings dismissed.

On 23 April 2014 Dr Paul Barach willingly provided a letter of apology to me regarding assertions and allegations that he had made to the media and Dr John Kaye. The apology states:

During the period after my cessation of employment with UNSW, I [Paul 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. I accept that you [Andrew McIntosh] have acted with propriety at all times and I unreservedly withdraw my allegations and apologise to you for any offence they caused.

In terms of my role in the Service and its value, Ms Elizabeth Koff, Chief Executive Sydney Children's Hospital Network, wrote on 28 May 2014 to thank me for my 'outstanding service' on behalf of children in need in New South Wales. She also acknowledged the 'important and public spirited role' I played in establishing the Service and maintaining it for so long. Elizabeth Koff's kind words reflect very well on everyone involved in the Service.

I left the employ of UNSW in good standing and was invited to continue my association with UNSW in an adjunct capacity.

Appendix 2 Minutes

Draft Minutes No. 46

Thursday 26 February 2015

Parkes Room, Parliament House, Sydney, at 3.00 pm.

1. Members present

Mr Khan, *Chair*

Mr Primrose, *Deputy Chair*

Revd Mr Nile

In attendance: Steven Reynolds, Susan Want, Jenelle Moore.

2. Apologies

Miss Gardiner

Mrs Maclaren-Jones

Mr Searle

3. Confirmation of minutes of previous meetings

Resolved, on the motion of Revd Mr Nile: That minutes no. 45 be confirmed.

4. Correspondence

Received

- 25 February 2015 – Letter from the President to the Chair forwarding correspondence from Dr Andrew McIntosh requesting a citizen's right of reply.
- ***

5. Request for citizen's right of reply – Dr Andrew McIntosh

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 Dr McIntosh, recommending that a response by Dr McIntosh in a form of words agreed to by Dr McIntosh 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 Dr McIntosh and Dr Kaye of the proposed tabling of the report.

6. ***

7. Adjournment

The committee adjourned at 3.12 pm, *sine die*.

Susan Want

Clerk to the Committee