

1999

(No. 5)



PARLIAMENT OF TASMANIA

JOINT SELECT COMMITTEE

WORKING ARRANGEMENTS OF THE PARLIAMENT

REPORT No. 6

ON CITIZEN'S RIGHT OF REPLY

*Brought up by the Leader of the Government in the Legislative Council
(the Honourable Michael Aird MLC)*

MEMBERS OF THE COMMITTEE

Hon. *Michael Aird* MLC (Chair)

Hon. *Sue Smith* MLC

Hon. *Stephen Wilson* MLC

Hon. *Ray Groom* MHA

Hon. *Paul Lennon* MHA

Hon *Peter Patmore* MHA

INTRODUCTION

The Committee was established by both Houses of the Tasmanian Parliament at the commencement of the First Session of the Forty-fourth Parliament on 7 October 1998. The Terms of Reference for the Committee are set out below. The principal role of the Committee is to examine and recommend to both House measures which may improve the performance and efficiency of the Parliament

TERMS OF REFERENCE

That a Joint Select Committee be appointed with power to send for persons and papers, with leave to sit during any adjournment of either House and with leave to adjourn from place to place, and with leave to report from time to time, to inquire into and report upon —

- (1) Measures for reform which may improve the performance and efficiency of the Parliament and its Members having particular regard to, but not confined by, a consideration of —
 - (a) the Statement of Principles agreed to by resolution of the Legislative Council on the 3rd and 4th day of September 1997;
 - (b) the procedures for the resolution of dispute and deadlocks between both Houses including standing order provisions and Parliamentary custom and conventions;

(c) the system of Statutory Standing, Joint Sessional and Joint Select Committees of both Houses, their roles, functions and relevance to contemporary Parliamentary practice;

(d) whether a separate Appropriation Act for —

- (i) the Parliament;
- (ii) the Auditor-General's office;
- (iii) the Ombudsman's Office;
- (iv) the Electoral Office;

is desirable.

(e) and any other matters incidental thereto.

(2) That the Committee be authorised to disclose or publish, as it thinks fit, any evidence or document presented to it prior to such evidence being reported to either House.

(3) That the Committee finalise its report by 31 March 1999.*

*By Order of both Houses passed on 16 March 1999, Term of Reference (3), which required the Committee finalise its report by 31 March 1999, was deleted to allow the Committee to pursue further its enquiries and permit regular reports to Parliament on specific matters.

REPORT

CITIZEN'S RIGHT OF REPLY

Background

The issue of a Citizen's Right of Reply was discussed by the House of Assembly Select Committee on the Reform of Parliament in the last Parliament without a conclusion being reached. At the commencement of the present Parliament the Speaker of the House of Assembly requested the Joint Select Committee on the Working Arrangements of the Parliament, to consider this matter in its deliberations.

The Joint Select Committee on the Working Arrangements of the Parliament met on 14 January 1999 and resolved to have one of its number, the Hon. Stephen Wilson MLC investigate the current arrangements in other Australian Parliamentary jurisdictions and report to the Committee. A copy of this report, which was brought up and Tabled in the Committee on 16 March 1999 is appended (Appendix A).

Deliberations

The Committee believes that there should be a provision for a Citizen's Right of Reply as a protection for persons referred to in the debates of both Houses of the Tasmanian Parliament.

The Victorian Legislative Council model is the most recent example of introduction into an Australian Parliament of a Citizen's Right of Reply and refines rules from other jurisdictions. The Committee is of the opinion that the Victorian model provides the most useful precedent for this Parliament and for the sake of simplicity and ease of operation is prepared to follow most of those guidelines.

The Committee considered the issues raised in Mr Wilson's report on Citizen's Right of Reply.

ISSUES:

1. Submissions to be received from natural persons which excludes corporations and organisations,
or
all with corporations only excepted where stamped with corporation seal.
2. Time limit to apply for submissions from date of offending statements being made, eg ACT has a 3 month time limit,
or
no time limit to apply.
3. Submission to be made to Presiding Officer of the House of Parliament concerned for their sole assessment of merit within guidelines provided,
or
submission to be made to the Presiding Officer of the House of Parliament concerned to determine whether trivial, vexatious, frivolous or offensive, then referred to a Committee such as:-
 - (a) Privileges in most States; **or**
 - (b) Members Ethics and Parliamentary Privileges; **or**
 - (c) Constitutional Affairs Committee.
4. Whether the reporting of findings or acceptance of the submission is included in Hansard by an announcement by the Presiding Officer, or whether the acceptance of the submission, and its inclusion in Hansard, has to be ordered by the House of Parliament concerned.

The issues raised by Mr Wilson have been dealt with as follows in the recommended models.

(1) The Committee is of the opinion that submissions may be received from persons including individuals and persons acting as office holders on behalf of corporations. The distinction between "natural persons" and corporations by some jurisdictions is thought to be unnecessary at present.

(2) The Committee believes that a time limit for the making of submissions is not necessary.

(3) The Committee, considered issue (3) of Mr Wilson's report, and the Speaker of the House of Assembly and the President of the Legislative Council have been consulted. The Committee favours the handling of each Citizen's Right of Reply by the Speaker and the Privileges Committee in the House of Assembly and by the President with option of a Committee examining submissions in the Legislative Council. This would allow for input from other Members as well as the Presiding Officer and would be consistent with local practice where Committees offer considered advice based where possible on a consensus of opinion.

(4) The issue of whether a submission should be ordered by either House to be accepted and incorporated into *Hansard* was considered. The Committee is of the opinion that it is sufficient for the Speaker or President (as the case may be) to announce the acceptance of a submission to the House or Council, and forward it to *Hansard* for inclusion as an appendix in the transcript of the next sitting day.

Two other issues were considered by the Committee, viz:- (a) criticism of the actions of the Speaker, the President or the examining Committees in carrying out their responsibilities under the recommended Sessional Order; and (b) retrospectivity in relation to events prior to the passage of the Sessional Order.

The Committee believes that the Presiding Officers and the relevant Committees where necessary can be relied upon to handle matters fairly and impartially. Such decisions in relation to Citizen's Right of Reply submissions should be final.

The possibility of retrospective action under the proposed Sessional Order is thought to be undesirable, as it is a long held convention that where possible Parliament's decisions should not contain retrospective elements.

The Committee believes that a Citizen's Right of Reply mechanism should be allowed to operate for a two year period, at the end of which it should be reviewed.

Recommendations

The Committee recommends to both Houses that the following Sessional Orders be adopted to provide for a Citizen's Right of Reply for a trial period of two years; at the end of which time the mechanism will be reviewed: -

DRAFT MOTION FOR A SESSIONAL ORDER

PROTECTION OF PERSONS REFERRED TO IN DEBATE "CITIZENS RIGHT OF REPLY"

HOUSE OF ASSEMBLY

The Deputy Premier to move, - That, for the remainder of this Session -

- (1) A person who has been referred to in the House of Assembly by name, or in such a way as to be readily identified, may make a submission in writing to the Speaker -
 - (a) claiming that the person 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 person's privacy has been unreasonably invaded by reason of that reference; and
 - (b) requesting that the person be permitted to incorporate an appropriate response in the Parliamentary Debates (*Hansard*).

- (2) If, upon considering a submission under this Order, the Speaker is satisfied that the subject of the submission is not so obviously trivial or the submission so frivolous, vexatious or offensive in character the Speaker shall then refer the matter to the Privileges Committee which may determine -
 - (a) that no further action be taken in relation to the submission; or
 - (b) that a response by the person who made the submission be incorporated in *Hansard* – and the Speaker shall inform the House of such decision.

The response shall be incorporated into *Hansard* as an appendix to the record of debate for the next day's sitting.

- (3) In considering a submission under this Order the Committee -
 - (a) may confer with the person who made the submission;
 - (b) must give notice of the submission in writing to the Member who referred in the House of Assembly to that person and then consult with the Member prior to any response being presented to the House; and
 - (c) shall not consider or judge the truth of any statements made in the House or the submission.

- (4) A response presented to the House of Assembly -
 - (a) shall be succinct and strictly relevant to the issue at hand and shall not contain any matter which may be 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 unreasonably invading a person's privacy, in the manner referred to in (1) above; or
 - (ii) unreasonably adding to or aggravating any such adverse effect, injury or invasion of privacy suffered by a person.

- (5) The action of the Speaker or the Committee pursuant to the provisions of this order shall be deemed to be final and no motion of dissent shall be permitted.

- (6) This Order shall have effect on and from the day upon which it passed the House of Assembly.

- (7) Any events prior to the passage of this Order are expressly excluded from its provisions.

DRAFT MOTION FOR A SESSIONAL ORDER

PROTECTION OF PERSONS REFERRED TO IN DEBATE “CITIZENS RIGHT OF REPLY”

LEGISLATIVE COUNCIL

The Leader of the Government to move, - That, for the remainder of this Session -

- (1) A person who has been referred to in the Legislative Council by name, or in such a way as to be readily identified, may make a submission in writing to the President-
 - (a) claiming that the person 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 person's privacy has been unreasonably invaded by reason of that reference; and
 - (b) requesting that the person be permitted to incorporate an appropriate response in the Parliamentary Debates (*Hansard*).
- (2) If, upon considering a submission under this Order, the President is satisfied that the subject of the submission is not so obviously trivial or the submission so frivolous, vexatious or offensive in character, the President may make a determination on the matter or refer the matter to a Committee. The President may determine with the advice of such a Committee where necessary: -
 - (a) that no further action be taken in relation to the submission; or
 - (b) that a response by the person who made the submission be incorporated into *Hansard* and the President shall inform the Council of such decision.

The response shall be incorporated into *Hansard* as an appendix to the record of debate for the next day's sitting

- (3) In considering a submission under this Order the President or the Committee -
 - (a) may confer with the person who made the submission;
 - (b) must give notice of the submission in writing to the Member who referred in the Legislative Council to that person and then consult with the Member prior to any response being presented to the Council; and
 - (c) shall not consider or judge the truth of any statements made in the Council or the submission.

- (4) A response presented to the Legislative Council -
 - (a) shall be succinct and strictly relevant to the issue at hand and shall not contain any matter which may be 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 unreasonably invading a person's privacy, in the manner referred to in (1) above; or
 - (ii) unreasonably adding to or aggravating any such adverse effect, injury or invasion of privacy suffered by a person.
- (5) The action of the President or the Committee pursuant to the provisions of this order shall be deemed to be final and no motion of dissent shall be permitted.
- (6) This Order shall have effect on and from the day upon which it passed the Legislative Council.
- (7) Any events prior to the passage of this Order are expressly excluded from its provisions.

Parliament House
4 May 1999

Hon Michael Aird, MLC,
CHAIRPERSON

APPENDIX A

Report of the Hon. Stephen Wilson MLC to the Joint Select Committee on the Working Arrangements of the Parliament, on a Citizen's Right of Reply

REPORT TO JOINT SELECT COMMITTEE

WORKING ARRANGEMENTS OF THE PARLIAMENT

SUBJECT

Citizen's Right of Reply.

BACKGROUND

Following discussions on the above subject at the 14 January 1999 meeting of the Working Arrangements of Parliament Select Committee, it was suggested that I consider the information available, have any discussions thought necessary and provide a brief report back to the Committee on the Citizen's Right of Reply issue.

The following jurisdictions have adopted Citizen's Right of Reply:

- *The Australian Senate – 1988*
- *ACT Legislative Assembly – 1995*
- *Queensland Legislative Assembly – 1995*
- *New South Wales Legislative Assembly – 1996*
- *New South Wales Legislative Council – 1997*
- *The House of Representatives – 1997*
- *Victorian Legislative Assembly – 1998*
- *Victorian Legislative Council – 1998*

In addition to the above, the South Australian Parliament has recently considered an opposition proposal and the Western Australia Legislative Council has had its Standing Orders Committee consider and propose Standing Order changes, which are not yet adopted.

I have made enquiries with a number of personal contacts in other Parliamentary jurisdictions, including Mr Harry Evans, Clerk of the Senate, and Mr Allan Bray, Clerk of the Legislative Council in Victoria, to discuss the workings of, and method of adoption, of Citizen's Right of Reply. I have also spoken with Members of the South Australian (Government), and Western Australian (Opposition) Parliaments on the subject, to become familiar with

the likelihood of its adoption in those States by at least one House of Parliament or both.

I have identified the following as issues which Members of the Committee may wish to discuss.

ISSUES:

5. Submissions to be received from natural persons which excludes corporations and organisations,
or
all with corporations only excepted where stamped with corporation seal.
6. Time limit to apply for submissions from date of offending statements being made, eg ACT has a 3 month time limit,
or
no time limit to apply.
7. Submission to be made to Presiding Officer of the House of Parliament concerned for their sole assessment of merit within guidelines provided,
or
submission to be made to the Presiding Officer of the House of Parliament concerned to determine whether trivial, vexatious, frivolous or offensive, then referred to a Committee – Privileges in most States,
or Members Ethics and Parliamentary Privileges,
or Constitutional Affairs Committee.
8. Whether the reporting of findings or acceptance of the submission is included in Hansard by an announcement by the Presiding Officer, or whether the acceptance of the submission, and its inclusion in Hansard, has to be ordered by the House of Parliament concerned.

COMMENT

Article 9 of the *Bill of Rights 1689* which provides “*That the freedom of speech and debate or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament*”¹ has become the principle upon which modern day Parliamentary privilege is derived.

This Privilege is most important to Members of Parliament and must be maintained.

¹ The Bill of Rights 1689 applies in New South Wales by express enactment under section 6 of the Imperial Acts Application Act 1969.

The most fundamental principle of this Privilege is discussed by Erskine May *“Subject to the rules of debate, a Member may state whatever the Member thinks fit in debate, however offensive it may be to the feeling, or injurious to the character, or individuals; and the Member is protected by their Privilege from any action for libel, as well as from any other question or molestation.”*²

This Privilege does not extend in principle to offences against the Standing Orders or Parliamentary practice where in Erskine May’s words, *“The House has power to restrain and discipline Members who, by their conduct offend the House.”*³

Members of Parliament, however, may sometimes exercise their privilege in such a way that persons outside the House may claim to be adversely affected by comments made about them by a Member in the House. When this occurs Parliamentary Privilege is questioned by some outside of Parliament.

To maintain the integrity of Parliamentary Privilege, Citizen’s Right of Reply can provide an offset to any adverse effect claimed by a person outside the House.

Experience to date shows that Citizen’s Right of Reply in jurisdictions where it has been introduced is not misused, or in fact often used; for example, the Australian Senate has had 25 responses agreed to since 1988 - no responses have been disagreed to - however, 5 have not been proceeded with by the respondent.

RECOMMENDATIONS

I recommend that:

1. A Citizen’s Right of Reply be introduced into the Houses of the Tasmanian Parliament
2. That the model most appropriate is that used by the Victorian Legislative Council
3. That a sessional order be used for a trial period of two years.

The model recommended incorporates the following principles:

1. Submissions received from a person, (the same as the Senate), which does not provide distinctions between natural persons or companies.
2. No time limits to apply.

² Erskine May’s Treatise on the Law, Privileges, Proceedings and Usage of Parliament, C.J. Boulton, Editor, 21st edition, London, Butterworths 1989, p.84

³ May, *ibid.*

3. Submissions are made to the Presiding Officer who deals with them according to the guidelines established by the Sessional Order.
4. Reply included in Hansard upon announcement by the Presiding Officer to the House.

STEPHEN J WILSON MLC

25 February 1999