

NEWSLETTER CIRCULATED BY TWO MLAs WITH LINKS TO A
THIRD-PARTY WEBSITE

SELECT COMMITTEE ON PRIVILEGES 2018

REPORT

THE COMMITTEE

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RESOLUTION OF APPOINTMENT

That:

- (1) this Assembly notes:
 - (a) the letter distributed to Canberra residents in the names of Miss C. Burch and Ms Lee titled *Inquiry into the methodology for determining rates and land tax for apartments*;
 - (b) the letter calls upon residents of the Australian Capital Territory to make submissions to an inquiry of an Assembly committee via the haveyoursay.net.au website;
 - (c) the 'haveyoursay' website is not operated by the committee secretariat, but by the Liberal Party of Australia ACT Division, with a registrant contact name of Alistair Coe;
 - (d) the letter and the 'haveyoursay' website may combine to create a false impression that they are proceedings of the Assembly or its committees;
 - (e) as political parties are not subject to the *Privacy Act 1988* (section 6C), there is no law governing how any information collected by the website will be used, or that all submissions made were accurately forwarded to the committee;
 - (f) there is a possibility that submissions to the 'haveyoursay' website were not all submitted to the Standing Committee on Public Accounts, and hence the course of the inquiry has been corrupted; and
 - (g) a number of other non-Legislative Assembly websites have been established to generate submissions to Assembly committee inquiries, including Unions ACT for the insecure work inquiry and Australian Christian Lobby for the Select Committee on End of Life Choices in the ACT;
- (2) pursuant to standing order 277, a Select Committee on Privileges be established to examine whether there has been a breach of the standing orders by contempt of the committee by Ms Lee, Miss C. Burch or Mr Coe, in relation to matters noted and any other relevant matters, including whether the conduct constitutes:
 - (a) interference with the Assembly;
 - (b) obstruction of orders;
 - (c) interference with witnesses;
 - (d) refusal or failure to produce documents, or to allow the inspection of documents; or
 - (e) destruction, damage, forging or falsification of any documents;
- (3) the Committee should also examine whether the third-party websites raised in (1)(g) have raised any issues of breaches of privilege or standing orders, and

whether guidelines should be developed for promotion of, and generation of, submissions to committee inquiries;

- (4) the Committee shall report back to the Assembly on the first sitting day of July 2018;
- (4A) if the Assembly is not sitting when the report is completed, the Speaker, or, in the absence of the Speaker, the Deputy Speaker, is authorised to give directions for its printing, publication and circulation; (*Amended 10 May 2018*)
- (5) notes that the Standing Committee on Public Accounts can continue its business relating to the rates inquiry by meeting and holding public hearings on this matter, but should not report to the Assembly prior to the Select Committee on Privileges reporting to the Assembly; and
- (6) the membership of the Committee is to be Ms Cheyne (Government), Mr Rattenbury (Crossbench), Mr Wall (Opposition).

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1 CONTEMPT OF THE LEGISLATIVE ASSEMBLY

SOURCES OF THE LEGISLATIVE ASSEMBLY'S PRIVILEGES

1.1. The powers and privileges of the ACT Legislative Assembly derive from the *Australian Capital Territory (Self Government) Act 1988* which states at section 24 that:

"(2) ... the Assembly may also make laws:

(a) declaring the powers of the Assembly and of its members and committees, but so that the powers so declared do not exceed the powers for the time being of the House of Representatives¹ ...

(3) Until the Assembly makes a law with respect to its powers, the Assembly and its members and committees have the same powers as the powers for the time being of the House of Representatives....".

1.2. The Assembly has not made a law under this section. Thus the powers and immunities of the Assembly are the same as those of the House of Representatives, with one exception – that, as a result of subsection 24 (4) of the Self Government Act, it has no power to imprison or fine a person who might be found to be in contempt of the Assembly or its committees.

1.3. The powers of the Assembly include those necessary to assert and to protect its privileges. The privileges of the Legislative Assembly comprise those immunities and powers necessary for the conduct of the business of the legislature. Immunities are exemptions from the ordinary law which enable Members to carry out their duties. Arguably the best known of these is the exemption from the laws of defamation or libel in regard to the proceedings of the Assembly and its committees. This is considered essential for the protection of Members' (and witnesses') freedom of speech in the Assembly.

1.4. The privileges of the Commonwealth Parliament are defined in the *Parliamentary Privileges Act 1987* (Cwlth). At section 16 of that Act is a definition of what constitutes "proceedings in Parliament", which are:

"all words spoken and acts done in the course of, or for the purposes of or incidental to, the transacting of the business of a House or of a committee, and, without limiting the generality of the foregoing, includes:

(a) the giving of evidence before a House or a committee, and evidence so given;

¹ The privileges of the House of Representatives derive in turn from those of the British House of Commons as at 1901 via section 49 of the Australian Constitution.

- (b) the presentation or submission of a document to a House or a committee;
- (c) the preparation of a document for purposes of or incidental to the transacting of any such business; and
- (d) the formulation, making or publication of a document, including a report, by or pursuant to an order of a House or a committee and the document so formulated, made or published.”

- 1.5. All persons participating in “proceedings” as defined above are covered by “privilege”.
- 1.6. Thus, proceedings in Parliament can encompass a broad range of activities and can include the evidence of witnesses before committees and documents prepared by third parties for use by Members in the course of their parliamentary duties.

CONTEMPT

- 1.7. The powers of the Assembly to examine and, if necessary, to punish, contempts are analogous to that of the courts to punish contempts of court, and reflect the need of a legislature “to protect themselves from acts which directly or indirectly impede them in the performance of their functions.”² They are the powers necessary to enable the institution and its members to discharge their responsibilities. Note that “the power [to punish contempts] does not depend on the acts judged and punished being violations of particular immunities”.³
- 1.8. There is no exhaustive list of what may constitute contempt of a legislature, although the New Zealand House of Representatives has attempted, at standing order 410, to list a number of actions which may be treated as contempts. It was emphasised “that these examples were illustrative rather than exhaustive, and that new situations might arise that the House might wish to treat as contempts”.⁴ Of note is:
- “(b) deliberately attempting to mislead the House or a committee (by way of statement, evidence, or petition).”.
- 1.9. While Parliaments have great freedom and flexibility to judge matters of privilege and contempt, the *Parliamentary Privileges Act 1987* and the proceedings of the Commonwealth Parliament provide relevant guidance. Significantly, under “what amounts to a statutory definition”⁵, contempt of Parliament is qualified in the *Parliamentary Privileges Act 1987* at section 4:

“Essential element of offences

² Odgers’ *Australian Senate Practice*, 14th edition, p. 83.

³ Odgers’, op cit, p. 83.

⁴ McGee, *Parliamentary Practice in New Zealand*, 4th edition, p. 763.

⁵ Odgers’, op cit, p. 84.

4. Conduct (including the use of words) does not constitute an offence against a House unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or a committee of its authority or functions, or with the free performance by a member of a member's duties as a member."
- 1.10. Consequently, the Houses of the Commonwealth Parliament, while treating contempt seriously have tended to exercise their powers "with great circumspection". The Senate Privileges Committee has generally confined its investigations to "serious matters potentially involving significant obstruction of the Senate..." and "... now regards a culpable intention on the part of the person concerned as essential for the establishment of contempt."⁶ Similarly, the practice of the House of Representatives is to "exercise or invoke its powers in respect of matters of contempt and privilege sparingly..." and "...the Joint Select Committee on Parliamentary Privilege recommended the adoption by the House of a policy of restraint in these matters. Although this recommendation has not been formally adopted by the House, the Committee of Privileges and Speakers have had regard to the policy."⁷
- 1.11. In determining whether a charge of contempt can be sustained, many jurisdictions have adopted the civil law test of on the balance of probabilities, but one of a high degree of probability.⁸
- 1.12. It is reasonable to conclude from the above that for an action to constitute a finding of contempt it should include (a) an **improper** interference with the free exercise by a committee of its authority or functions; and (b) an **intention** by the person responsible for the action to improperly interfere with the free performance of a committee's responsibilities. [emphasis added]

ASSEMBLY PRACTICE

- 1.13. Reports of previous privileges inquiries by Assembly committees also provide precedents, and the Assembly has, at standing order 277, identified some matters which may constitute contempt. Of relevance to this Committee's inquiry is standing order 277 (a):

"(a) Interference with the Assembly

A person shall not improperly interfere with the free exercise by the Assembly or a committee of its authority, or with the free performance by a Member of the Member's duties as a Member."

⁶ Odgers', *op cit*, p. 88.

⁷ Pettifer, *House of Representatives Practice*, 6th edition, p. 777.

⁸ For example, House of Commons, Commonwealth Parliament, New Zealand, Queensland, Victoria.

1.14. Standing order 278 provides direction for the Committee when dealing with possible contempts.

“278. The Assembly will take into account the following criteria when determining whether matters possibly involving contempt should be referred to a Select Committee on Privilege and whether a contempt has been committed, and requires the committee to take these criteria into account when inquiring into any matter referred to it:

- (a) the principle that the Assembly’s power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Assembly and its committees and for Members against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Assembly;
- (b) the existence of any remedy other than that power for any act which may be held to be a contempt; and
- (c) whether a person who committed any act which may be held to be a contempt:
 - (i) knowingly committed that act, or
 - (ii) had any reasonable excuse for the commission of that act.”

2 BACKGROUND TO INQUIRY

- 2.1 In 2012-13 the ACT Government announced that it would embark upon a series of tax reform processes, including the abolition of some taxes (eg taxes on insurances duties) and less reliance on conveyance duties. The revenue foregone would be replaced progressively through increases in the general rates system.
- 2.2 In the 2017-18 Budget, the Government announced changes to the methodology by which general rates and land taxes for multi-unit dwellings would be calculated to “establish greater equity in general rates paid between houses and units...[and]... better reflect the distribution of land values under the new calculation methodology”⁹.
- 2.3 While the average increase in residential rates was around 7%, those for multi-unit dwellings “will be higher for the next 2 years”.¹⁰
- 2.4 The changes have not come without criticism, particularly by those affected. On 15 February 2018, the Leader of the Opposition, Mr Alistair Coe MLA, presented to the Assembly two out-of-order petitions bearing 5540 signatures objecting to the changed methodology. The Assembly then referred the petitions to the Standing Committee on Public Accounts (PAC) for inquiry and report.
- 2.5 Two Opposition members of the Assembly, Ms Elizabeth Lee MLA and Miss Candice Burch MLA distributed a jointly authored newsletter ([Appendix A](#)) in the Kurrajong electorate highlighting the adverse impacts of the changes, and drawing attention to the abovementioned PAC inquiry and its call for submissions. The link provided in the newsletter was not a direct link to the PAC. Rather, it was a link to a “have your say” website administered by the Canberra Liberals ([Appendix B](#)), which then directed users to the actual email address of the PAC, or, alternatively, users could complete a brief survey form which, users were advised, would then automatically be forwarded to the PAC.
- 2.6 On 22 March 2018, Ms Bec Cody MLA wrote to the Speaker alleging that the letter and its use of the Canberra Liberals’ “have your say” website was misleading, was interfering in the processes of a parliamentary committee, and was a conspiracy to control the process, and possibly the outcome, of the PAC.¹¹
- 2.7 In accordance with established practice, the Speaker wrote to the PAC seeking its views on whether the alleged action had caused or had the potential to cause substantial interference with its work and whether the newsletter would have a tendency to encourage submissions

⁹ 2017-18 Budget Paper No.6, p.226-7.

¹⁰ 2017-18 Budget Paper No.6, p.226.

¹¹ Letter from Ms Cody to the Speaker, Minutes of Proceedings No.54, 11 April 2018, p 783.

from only one side of the argument and thus interfere with the inquiry. The PAC replied that it could not come to an agreement on those matters.

- 2.8 On 11 April 2018 the Speaker reported the matter to the Assembly and advised that she was prepared to allow precedence to a motion under standing order 276(e). Ms Cody duly moved the motion which, after amendment, was agreed to by the Assembly on 12 April and forms this Committee's [terms of reference](#).

3 CONDUCT OF THE INQUIRY

- 3.1 The Committee wrote to Ms Lee, Miss Burch and Mr Coe, individually, seeking submissions addressing the Committee's terms of reference. In relation to Ms Lee and Miss Burch, the Committee sought details of the letter that was co-signed by the two Members, and how submissions would be passed on to the Public Accounts Committee (PAC). Mr Coe was asked to provide details of how the Canberra Liberals' [Have Your Say website](#) operated and, in particular, how submissions were gathered and forwarded to the PAC.
- 3.2 The Committee also wrote to UnionsACT and the Australian Christian Lobby in relation to their use of links on their websites to gather and forward submissions to Assembly committee inquiries into secure work and end of life choices, respectively.
- 3.3 All parties who were approached provided responses to the Committee. Their responses are published on the [Committee's website](#).
- 3.4 Given the serious nature of the allegations levelled at the MLAs and the Committee's desire to conduct its inquiry in an environment free from partisan politics, all three MLAs individually met with the Committee at hearings held *in camera*. However, the Committee later authorised publication of the evidence taken in its entirety.
- 3.5 As the Committee was also charged with examining the desirability of establishing guidelines for third party websites in the promotion and generation of submissions to Assembly inquiries, UnionsACT and the Australian Christian Lobby were invited to appear before the Committee to discuss their recent experiences with such tools. Regrettably, both organisations declined to appear. While disappointed, the Committee chose not to press the matter further.

EXPERIENCES OF ASSEMBLY COMMITTEES

- 3.6 This inquiry had its genesis in the Standing Committee on Public Accounts' inquiry into the methodology for determining rates and land tax for strata residences. However, as detailed at item 1(g) of its terms of reference, other committees had received submissions from third party websites during previous inquiries. Noting this, the Committee sought factual information from all three committees. Their responses are published on the Committee's website.

SURVEY OF USERS OF HAVE YOUR SAY WEBSITE

- 3.7 Mr Coe, in his submission, provided the contact details (redacted in the published version) of 42 persons who had used the Have Your Say website to have their views on changes to the methodology for determining rates and land taxes passed on to the Standing Committee on Public Accounts. The Privileges Committee thought it would be of significant benefit to its

deliberations if those persons were surveyed. Accordingly, each addressee was emailed and the following questions were posed:

- How did you come to hear about the Have Your Say website?
- Did you believe the form on the Have Your Say website was a standard way of making a submission?
- Did you know that the Have Your Say website was administered by a political party? If not, who did you believe it was administered by?
- Would you have submitted to the inquiry via the form on the Have Your Say website if you knew your details and submission would also be received by a political party?

3.8 A collation of the responses received is at [Appendix C](#)

4 FINDINGS AND RECOMMENDATIONS

CONDUCT OF MS LEE AND MISS BURCH

4.1 In March 2018 Ms Lee and Miss Burch distributed a newsletter ([Appendix A](#)) in the electorate of Kurrajong highlighting the impact that the Government's changed methodology for calculating rates and land tax for apartments was having on certain ACT residents, and informing constituents that the Assembly's Standing Committee on Public Accounts (PAC) was conducting an inquiry into the matter.

4.2 In the newsletter, the Members stated:

"If you are an owner or a tenant or just plain think this is unfair, we encourage you to make a submission to the Inquiry at: <https://www.haveyoursay.net.au/strata/>."

4.3 The link does not take users directly to the PAC. Rather, the link is to a webpage administered by the Canberra Liberals ([Appendix B](#)). From that webpage, users were provided with information on the PAC inquiry, including the actual email address through which to make submissions directly. As an alternative to an email to the PAC, users were given the option of completing a brief survey form with an assurance that their messages would automatically be sent to the PAC and may be published subsequently.

4.4 Asked what motivated them to distribute the newsletter within their electorate, Ms Lee and Miss Burch stated to the Committee that they had received many representations on the issue of rates and it was evident to them that there was a lack of awareness within the community of the PAC's inquiry into this subject. In her submission to the Committee, Ms Lee remarked:

"A core duty of a local member is to ensure that the voices of our electorate are heard. It is particularly incumbent upon members of the Opposition to make sure that the voices of people who are not being heard by those in Government are heard.

As with any inquiry conducted by the Assembly, most MLAs would agree that the more submissions we receive, the better informed our deliberations can be."

4.5 The committee was keen to pursue why and how the Members came to employ the Haveyoursay website. When asked why use an alternative website with a survey form, rather than give people the Assembly's web address with advice that only a few paragraphs would be sufficient, both Members were of the view that many people found the prospect of making a submission to a committee to be daunting. Ms Lee said:

"**Ms Lee:** But when you start to describe to people, and you give them the official email and say, "You approach the secretary," and all of that, people start to go, "Oh, that just sounds a bit too hard." Even if you go, "No, no, no, it is actually quite simple," they start to

go, “Oh, I don’t know.” And then if you show them a website that has an electronic form which you sort of click through, they say, “Oh, it is much simpler.”

Ms Cheyne: Simpler than sending an email?

Ms Lee: Yes. Some people do not want it because they have got other reasons why they might not want to do it. They have gone, ‘No, no, no, its just too hard. I do not want to initiate it’”.¹²

4.6 And from Miss Burch:

Miss C Burch: I found that, for a lot of constituents, when you say, “Well, there is currently an inquiry; you should make a submission,” whether it is about this inquiry or any other inquiry, the idea of a submission is quite daunting, and a lot of people think that it has to be a substantive document that a lot of work and facts and figures go into. So it was about just trying to assist people to understand that a submission can really be as simple as an email, and that is why the form on the have your say website made it really simple for people to make a submission. So it was just that trying to encourage engagement and making it easier for people to actually make a submission.”¹³

4.7 On the question of how they had come to include the Haveyoursay link in their newsletter, the Members stated to the Committee that, as a matter of courtesy, they had notified Mr Coe of their intention to circulate a newsletter on the rates inquiry within their electorate. Mr Coe had, coincidentally, been developing a survey on the issue to be placed on the Haveyoursay website and it was suggested by Mr Coe and agreed that the newsletter include the link. Neither Ms Lee nor Miss Burch were involved in the drafting of the survey, which was all done from Mr Coe’s office. Mr Coe did not sign-off on the draft newsletter.

4.8 Before Ms Lee and Miss Burch proceeded with the newsletter and Mr Coe proceeded with publishing the survey, Mr Coe’s Chief of Staff sought the Clerk’s advice, in the context that it was known that submissions had been forwarded to committee inquiries from third party websites in the past. A verbal approach was made to the Clerk on 13 March but following concerns made by some individuals concerning the integrity of the process, written confirmation was sought later on 27 March (see [Appendix D](#)).

4.9 The Clerk indicated that he did not recall the initial approach specifically in relation to the Haveyoursay website, but rather cocerning the use of third party websites generally. The nub of his advice was that he thought that MLA’s promoting a diverse range of committee submissions on the internet was reasonable, comparing it to MLAs tweeting or using other means to make the public aware of an inquiry and to encourage public submissions. The Clerk

¹² Transcript of evidence, 22 May 2018, p.7

¹³ Transcript, 22 May 2018, p.19

also noted that ultimately it would be a decision for individual committees to accept, or not, submissions from third party websites.

- 4.10 It became clear to the Committee that neither Member had any control over, or interaction with, the Haveyour say website, nor did they have any significant understanding of how the site operated. They were not provided with copies of the submissions made, nor did they have any reason to believe that that submissions would also be held by Mr Coe in addition to being forwarded to the PAC. As far as they were aware, all submissions would be forwarded to the PAC and no vetting would occur.
- 4.11 In choosing to publicise the link, neither Member sought to inform themselves on how the back end processes of the website functioned.
- 4.12 Another issue which the Committee pursued was the similarity between the name of the Canberra Liberals' Haveyoursay website with the ACT Government's Yoursay website, and the potential for the names to cause confusion and mislead users. Miss Burch remarked that she thought Haveyoursay was "a pretty standard name for a community consultation website"¹⁴ and Mr Coe said that he had used the term "Have your say on Light Rail" previously and pre-dated the Government's use of the name on its website.¹⁵
- 4.13 Nevertheless, while the Committee accepts that the branding of the survey was similar to previous Canberra Liberals initiatives, the look and feel of the Haveyoursay website is very similar to that of the Government's Yoursay website and thus has the potential to create confusion.
- 4.14 Standing order 278 requires the committee to consider a number of criteria when determining whether a contempt has occurred. In the context of this inquiry, among them is whether the work of the PAC has been substantially obstructed. The PAC had previously advised the Speaker that it was unable to determine if this had happened. The Privileges Committee subsequently wrote to the PAC seeking more information. In its response, the committee was advised that the PAC had received 97 submissions to its inquiry, 43 of which were from the Haveyoursay website and 54 were through other means (ie, email). All bar 1 submission were critical of the changed methodology.¹⁶ In fact, the only submission in favour of the change came through the Haveyoursay website. The committee therefore concludes that submissions lodged via the Haveyoursay website did not have the effect of producing substantial interference with the work of the PAC.
- 4.15 The Committee accepts that Ms Lee's and Miss Burch's newsletter was created and circulated as what they saw as part of their duties as Members of the Assembly to facilitate community

¹⁴ Transcript, 22 May 2018, p.18

¹⁵ Transcript, 30 May 2018, p.27

¹⁶ Submission No 8 - Response to Privileges Committee questions – Standing Committee on Public Accounts

engagement with an Assembly inquiry. They had no control over the Haveyoursay website, the accompanying survey, and what happened with submissions once they were lodged. There was no collusion with Mr Coe to pervert the outcome of the PAC inquiry. Of concern to the committee, however, was an apparent lack of understanding of how the Haveyoursay website worked and therefore how could they be confident that the system operated as they believed it would.

- 4.16 While the omission of the PAC contact details from the newsletter was undesirable, the Committee does not believe it was a deliberate act intended to mislead people into believing that they were directly interacting with the PAC.
- 4.17 Furthermore, there is no evidence to suggest that the evidence received by the committee was skewed as a direct result of the newsletter and thus it did not cause substantial interference with the inquiry being conducted by the PAC.
- 4.18 Accordingly, in the absence of key elements generally accepted as being necessary for a finding of contempt to be sustained, the Committee **finds** that no contempt has been committed by Ms Lee or Miss Burch.

CONDUCT OF MR COE AND THE HAVEYOURSAY WEBSITE

- 4.19 Mr Coe is the registrant and primary contact for the Haveyoursay website, which was established in early 2017 for the Canberra Liberals to consult with Canberra residents.
- 4.20 Mr Coe confirmed that Ms Lee and Miss Burch had advised him in February or March this year of their intention to distribute a newsletter to constituents on the apartment rates issue, and that he had, separately, been considering creating a survey form for the website on the same issue. The suggestion that the link to the website be included in the newsletter was his.
- 4.21 Asked why he had created the survey, Mr Coe stated that responses to the PAC inquiry (and to other committees) had been “sluggish” and that it would be easier for people to submit to the inquiry by creating a survey form.¹⁷
- 4.22 An issue which has received media attention is the subsequent discovery that not all submissions were automatically sent to the PAC. Following some concern expressed in the Assembly during debate on the motion to establish this committee, a reconciliation of emails comparing what had been received with what had been published by the PAC indicated that 19 submissions had not been forwarded. On further investigation by the technical host of the website it was apparent that an issue with the “From” addresses was causing some emails to

¹⁷ Transcript, p.22

be rejected due to a “server domain policy”. Most (but not all) of the rejected emails contained the following disclaimer:

“This is a submission into the Inquiry into the methodology for determining rates and land tax for strata residences, via the submission tool provided by haveyoursay.net.au. I have agreed to provide the following:”

- 4.23 It appears that the disclaimer caused the email server to treat the email as spam.¹⁸ When made aware of the problem the decision was made by Mr Coe to close the survey. All rejected emails were forwarded to the PAC.
- 4.24 The fact that this was not discovered until after this privileges inquiry had been established raises a concern in that there was no active process for reconciliation between what was submitted and what was actually forwarded to the PAC. This deficiency in the process gives rise to the perception that submissions may have been selectively forwarded.
- 4.25 However, the Committee is satisfied that the scenario depicted in item 1(f) of its terms of reference (ie, that not all submissions were passed to the PAC, thereby corrupting the inquiry) did not occur.
- 4.26 Mr Coe was asked why the survey on the website remained open until 13 April, some 3 weeks after the PAC’s advertised closing date for submissions. In response, Mr Coe said:
- Mr Coe:** Well, it is up to the committee as to whether they accept them or not. I note that the committee still advertises that submissions can be sent to this email address, even when inquiries are closed, so that in effect marries with what the Assembly’s website says, as to how to make a submission to an inquiry.
- 4.27 Mr Coe was asked about the potential for confusion to be created by the name of the Haveyoursay website. As mentioned earlier ([paragraph 4.12](#)), he said that he had used the “Have your say” expression in previous campaigns. While the link brought users to a page clearly headed “An initiative of the Canberra Liberals”, Mr Coe was asked why the usual Canberra Liberals branding was absent. Mr Coe responded that they were trying to be as impartial as possible in order to solicit genuine feedback. To produce it using Liberals’ colours may not have been constructive and discouraged some from participating.
- 4.28 Despite Mr Coe’s explanation, the Committee does harbour concerns that, given the similarity in names, website design and the lack of obvious party branding, the site may be mistaken for an official ACT Government site. The fact that it was a political party’s website could have been made clearer.

¹⁸ Mr Coe’s explanation appears in full in the Transcript, pp 23-24

- 4.29 Another concern the committee had with the website was the lack of information provided to potential users. Users were not told that the PAC may not necessarily accept their submissions, giving rise to privilege protection issues (see below), nor were they informed how any information they provided would be treated, including that it would be held by the Canberra Liberals.
- 4.30 In order to gauge the impact the website had on the PAC inquiry, the committee surveyed all 42 responders who provided submissions through the Haveyoursay website. The committee received 22 responses, of which 19 answered specific questions posed. An analysis of the responses revealed:
- 5 (26%) people indicated that they became aware of the website through the newsletter, with the remainder chiefly becoming aware through personal contacts and the media.
 - 14 (74%) indicated that they were aware that the site was administered by a political party, with 5 specifically naming the party. Of the 5 unaware, 2 believed it to be an ACT Government website.
 - 17 (89%) indicated that they would have made their submission irrespective that the website was administered by a political party. One person indicated that they would not have done, while another was not sure.
- 4.31 Item 1(d) of the terms of reference state that the letter and the 'haveyoursay' website may combine to create a false impression that they are proceedings of the Assembly or its committees. The Committee does not believe that this has occurred to the extent necessary to cause substantial interference with the inquiry being conducted by the PAC, given:
- The website bears a heading that it is an initiative of the Canberra Liberals;
 - The website provides details of the PAC inquiry and includes links to the Assembly's website and the email address of the committee through which submissions could be made;
 - The survey form was offered as an alternative format which would be forwarded to the PAC
 - A survey of responders indicated that a significantly large majority were fully aware that the site was not an Assembly site.
- 4.32 Therefore, the Committee **finds** that no contempt has been committed by Mr Coe.

GUIDELINES FOR USE OF THIRD PARTY WEBSITES

- 4.33 A recurring theme throughout the inquiry has been that many people find the process of making a submission to a committee daunting and complicated. Ms Lee and Miss Burch cited this as a reason behind their newsletter, and Mr Coe claimed that the survey form on the Haveyoursay website was designed to make it easier for people to submit to the PAC inquiry.

- 4.34 Others have made similar comments. Comments from the survey of responders (see Appendix C) included:
- “I wouldn’t have made a submission if the process was too cumbersome”
 - “It mattered not about the route taken and this was a good initiative to provide information and a way to comment swiftly”
 - “I was happy with the form”
 - “I thought it was an easier way of making a submission, although not conventional”
- 4.35 Third party websites have provided input into previous Assembly inquiries. Unions ACT used a tool to provide input to the insecure work inquiry undertaken by the Standing Committee on Education, Employment and Youth Affairs, and Australian Christian Lobby appears to have used a facility to generate submissions to the Select Committee on End of Life Choices in the ACT.
- 4.36 The Privileges Committee wrote to both committees to ascertain their experience with those websites, and their responses are published as submissions.¹⁹
- 4.37 The experience of the Education Committee is noteworthy. Approximately half of the submissions it received were attributable to the UnionsACT website. However, the Committee was unable to use many of the submissions due to their non-compliance with Assembly requirements, typically in that they lacked address and phone number details, they did not address the terms of reference, or that they contained adverse mention of entities. These combined to require significant administrative effort from the Committee secretariat to make submissions compliant, where that was possible.
- 4.38 No privilege attaches to any submission until it has been formally received by a committee and authorised for publication. It is entirely a discretion of a committee whether it chooses to accept, or not, a submission. Submissions which contain adverse mentions of people and organisations can be particularly problematic, as absolute privilege may not attach to submissions created via a third party websites. Users should be cautioned that submissions not made directly to a parliamentary committee may not enjoy the protections afforded by parliamentary privilege.
- 4.39 It is important for any committee inquiry to attract a broad range of views and as many submissions as possible. It is evident to the Committee that many users have found that the use of simple survey forms and third party websites have made it easier for some people to interact with committees, and this engagement should be encouraged. Committees should be encouraged to create their own simple survey forms when conducting inquiries

¹⁹ Submission No 6 – Response to Privileges Committee questions – Select Committee on End of Life Choices in the ACT and Submission No 7 - Response to Privileges Committee questions – Standing Committee on Education, Employment and Youth Affairs

4.40 Further, the Committee believes that with the development of some simple guidelines, interaction via third party website could become a common option for the conduct of committee inquiries.

Recommendation 1

4.41 That the Standing Committee on Administration and Procedure, in consultation with the Committee of Chairs, develop guidelines for the use of third party websites in the preparation of submissions to Assembly inquiries.

4.42 Ideally, the guidelines should cover privilege aspects, should ensure that all submissions are forwarded automatically and without intervention, and be placed in a conspicuous place on the Assembly website.

Shane Rattenbury MLA

June 2018

APPENDIX A – NEWSLETTER CIRCULATED BY MS LEE AND MISS BURCH²⁰

²⁰ This document has been formatted to comply with the Office of the Legislative Assembly's document accessibility policy and its formatting may differ slightly from the original.

Elizabeth
LEE MLA



Candice
BURCH MLA

Inquiry into the methodology for determining rates and land tax for apartments

In 2017-18, this ACT Labor/Greens government unfairly changed the methodology used to determine rates and land tax for apartments. As a result, apartment rates have increased by up to \$1000 a year, and land taxes have increased by as much as \$1500.

This increase in rates and taxes is also putting upward pressure on rents. Apartment rents in Canberra are already second-highest in the country, only behind Sydney. The average cost of renting a house in Canberra was \$540 per week in December last year, up from \$500 a year earlier.

This ACT Labor/Greens government took this action without a mandate, without consultation, and without recognition given to the fact that apartment dwellers use less local services (such as garbage collection, roads, footpaths and nature strips) because many of these services are provided by building management and body corporates.

This ACT Labor/Greens government did this without analysing the negative impact higher rates and taxes would have on young Canberrans trying to save to buy their first home; on older Canberrans on fixed incomes who have recently downsized; and on young Canberra families who are finding the increasing costs of living a burden. These changes have an unfair and disproportionate impact on young people, the elderly, and lower income tenants.

The Public Accounts Committee of your ACT Legislative Assembly is calling for submissions on its Public Inquiry into these changes.

If you are an owner or a tenant or just plain think this is unfair, we encourage you to make a submission to the Inquiry at: <https://www.haveyoursay.net.au/strata/>. Submissions do not have to be long, and can simply outline how higher rates and taxes have negatively impacted you and your family. Submissions close on **Friday 23 March 2018**.

Have your say to call out this ACT Labor/Greens' unfair policy.

Elizabeth Lee MLA
Member for Kurrajong
team@elizabethlee.com.au

Candice Burch MLA
Member for Kurrajong
candice@candiceburch.com.au

Canberra Liberals
Members for Kurrajong

APPENDIX B – HAVE YOUR SAY WEBSITE PAGE AND SURVEY²¹

²¹ This document has been formatted to comply with the Office of the Legislative Assembly's document accessibility policy and its formatting may differ slightly from the original.

HAVE YOUR SAY

AN INITIATIVE OF THE CANBERRA LIBERALS

UNIT & APARTMENT RATES

Have your say > Consultations Front > Unit & Apartment Rates

 Posted on 7 March 2018

Please pass on your thoughts about rates for units and apartments in Canberra.

The ACT Legislative Assembly is conducting an inquiry into recent changes by the ACT Government into how rates are calculated. On 15 February, two petition relating to the methodology for determining rates and land tax for strata residences were referred to the Standing Committee on Public Accounts. Over 5,000 people expressed concern that the changes were unfair and costly, and petitioned the government to return to the previous methodology.

The ACT Legislative Assembly Public Accounts Committee is conducting an inquiry into this change. More information about the *Inquiry into the methodology for determining rates and land tax for strata residences* can be found on the [ACT Legislative Assembly's website](#).

Terms of Reference

At its meeting on Thursday, 15 February 2018, Mr Coe (Leader of the Opposition) presented two out-of-order petitions relating to the methodology for determining rates and land tax for strata residences, the terms of which are attached. The Assembly passed the following resolution:

"That the papers be referred to the Standing Committee on Public Accounts for inquiry and report by the last sitting day in May 2018."

Members of the public and all interested parties are invited to make submissions on the impact of this change to the Committee at LACommitteePA@parliament.act.gov.au by Friday 23 March 2018.

Alternatively, if you complete the form below, your message will automatically be sent to the Committee. Please note that submissions made using the form below will be sent to the Public Accounts Committee and may be published.

Name *

Email Address *

Phone Number *

Address *

Suburb

State/Territory

Postcode

Do you own a strata residence? *

Yes

No

Do you live in a strata residence? *

Yes

No

Should the changes to the methodology for determining rates and land tax for strata residences be reversed? *

Yes, they should be reversed

No, keep the changes

How has this change affected you?

Do you have any other comments on this issue?

Submit

PREVIOUS POST

[Community Organisations Survey](#)

NEXT POST

[Next Post](#)

Authorised by Alistair Coe MLA for the Canberra Liberals

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APPENDIX C – SURVEY OF RESPONDERS TO SURVEY

Survey of Have Your Say users to PAC inquiry

No.	How did you come to hear about the Have Your Say website?	Did you believe the form on the Have Your Say website was a standard way of making a submission?	Did you know that the Have Your Say website was administered by a political party? If not, who did you believe it was administered by?	Would you have submitted to the inquiry via the form on the Have Your Say website if you knew your details and submission would also be received by a political party?
1	From discussion with members of the LA	Yes	Yes	Yes, however, I would have not made a submission if I had known that nothing would have come of it - your emails indicate anything but a response to my inquiry!
2	I don't recall how I came to hear about "Have Your Say" but I do recall having registered about a year ago and thinking that it was a good idea.	Once again, I don't seem to recall the actual form. However, I would say that I wouldn't have made a submission if the process was too cumbersome.	No. I didn't know that it was administered by a political party. I actually thought it was an ACT government initiative – but, regardless of the party, I would still have submitted my views.	Yes.
3	I am very active investor and read and write about various issues related to property investment. I have few friends in Liberal and Labour party as well	I am not sure about the form on website is standard way of making submission. However, I am very much impressed that, whatever issues I raised on this website were either listened to or acted up on. Hence, I think	I am fully aware of the website is administered by Liberal Party ACT unit. The contact details on it are of Liberal party. No issues about it.	I am not sure about it. Previous letters to Shane Rattenbury regarding container deposit scheme, 3 letters to Mr Andrew Barr directly on his e mail address regarding payment of rates and land tax on credit card has received only a <i>suo moto</i> replies and no action further.

No.	How did you come to hear about the Have Your Say website?	Did you believe the form on the Have Your Say website was a standard way of making a submission?	Did you know that the Have Your Say website was administered by a political party? If not, who did you believe it was administered by?	Would you have submitted to the inquiry via the form on the Have Your Say website if you knew your details and submission would also be received by a political party?
	<p>with whom I discuss various community issues.</p> <p>One of my liberal party member who contested the ACT assembly elections told me about this website.</p> <p>Once I met Mr. Alistair Coe MLA at Gunghalin Market place and he also advised me to visit this site.</p>	<p>this is the best way to raise issues. Unless you guide me another form which will act in more swiftly than this one.</p>		<p>I am confident, that, irrespective of political affiliations, I need answers and actions for enquiries and public issues. I don't care who does it labor, Liberal or greens or Independent. I believe they all engaged in community development and public interest and public benefit. Hence, great to hear from Liberals at least they acted on it.</p>
4	Mailbox drop.	Yes	Yes	Yes
5	<p>We learnt about it from a letter in our mailbox informing us of the Public Accounts Committee Inquiry. It pointed out that we could comment to the Public Accounts Committee</p>	<p>Frankly we had not known about the Public Accounts Committee inquiry as we do not normally follow these issues on the Assembly web information sites. We appreciated being given the information in the</p>	<p>Yes, but as we said above we appreciated being informed about the Public Accounts Committee Inquiry ---that we would have otherwise known nothing about. Our views are apolitical as they relate to proposals to radically</p>	<p>Of course, yes. It was helpful that someone gave us the opportunity to "have your say" and an assurance that our views would be passed on to the Public Accounts Committee. This is a public interest issue not a political one.</p>

No.	How did you come to hear about the Have Your Say website?	Did you believe the form on the Have Your Say website was a standard way of making a submission?	Did you know that the Have Your Say website was administered by a political party? If not, who did you believe it was administered by?	Would you have submitted to the inquiry via the form on the Have Your Say website if you knew your details and submission would also be received by a political party?
	directly or on the form on the "have your say" website that would then be forwarded on direct to the Committee.	letter (only days before closing date) and it was easy to complete the form with assurance that our views would be sent to the Committee. It mattered not about the route taken and this was a good initiative to provide information and a way to comment swiftly.	increase living costs for apartment dwellers for which there had previously been no warning. In fact we have often been labor voters.	
6	My attention was drawn to it by a fellow unit owner in my block.	I think I knew it was done by a political party, and therefore not a standard way.	I think I knew it was done by a political party.	Yes I would because I was outraged by the 62.7% increase in my rates and I was willing to use virtually any means to protest this incredible increase. I think that the government is out-of-touch with the community, and shows a considerable degree of arrogance in legislating a rise of this amount.

No.	How did you come to hear about the Have Your Say website?	Did you believe the form on the Have Your Say website was a standard way of making a submission?	Did you know that the Have Your Say website was administered by a political party? If not, who did you believe it was administered by?	Would you have submitted to the inquiry via the form on the Have Your Say website if you knew your details and submission would also be received by a political party?
7	I heard about the website through my corporate body.	I was happy with the form.	I was aware it was administered by a political party.	I was happy to have my details open to the website administrators.
8	I found the website after reading a story on Canberra times.	Yes. I genuinely believed that the form on the website is a way to a standard way of making a submission. Is there any issue with the website?	I had no idea who operate it. It allowed me to express my concern.	To me, it is not relevant who operated as long as it gave me an opportunity to express my concern. If there is another website that allows me to do so, I will do it, again. In face, the government should have offered this opportunity to public before increasing rate. Failure to do so highlights complete disregard to public opinions. It is disrespectful to the community that support operation of the government.
9	I received a flyer in my letter box.	I thought it was an easier way of making a submission, although not conventional.	No, I didn't realise it was administered by a Political Party, but I thought it was an easier way of making a submission.	I wasn't that concerned as I had the opportunity of voicing my view!

No.	How did you come to hear about the Have Your Say website?	Did you believe the form on the Have Your Say website was a standard way of making a submission?	Did you know that the Have Your Say website was administered by a political party? If not, who did you believe it was administered by?	Would you have submitted to the inquiry via the form on the Have Your Say website if you knew your details and submission would also be received by a political party?
10	I was forwarded a link within a party based email from a family member (I do not subscribe to any political party publication)	I was not aware that there was a standard way to make a submission. My understanding is that a submission are generally collated by one group of people with like views (in this example) or individually through other more complicated means	<p>It was sent from a party email, through a party mailing list, headed by a party header, and the page itself with a title that established it as an initiative of the Liberal party. I think it was quite clear that this would be a way to ensure that a submission would be given the consideration that would not otherwise be achieved had it been submitted as an individual response.</p> <p>I consider it much like the YourSay website, which only operates discussions and submission prioritised by the Labour Party, the HaveYourSay website prioritises submissions that may</p>	If the submission wasn't to be received by the political party for whom I was writing the submission I would be extremely worried. When a submission is made, it was clear that the details of that submission would be public.

No.	How did you come to hear about the Have Your Say website?	Did you believe the form on the Have Your Say website was a standard way of making a submission?	Did you know that the Have Your Say website was administered by a political party? If not, who did you believe it was administered by?	Would you have submitted to the inquiry via the form on the Have Your Say website if you knew your details and submission would also be received by a political party?
			not receive the same visibility on the YourSay site.	
11	An online media article, perhaps on the CityNews website, or CanberraTimes perhaps, or other? where I read about the increased apartment rates and gleaned the link to Have your Say.	I don't recall the "form" nor format, only the pathway to submit an opinion on the way Rates on my apartment had near doubled over 5 years. Method - a new media norm perhaps, yes.	Yes.... either the media article (CityNews or Canberratimes or other?) where I read about the increased apartment rates and the link to HaveYourSay said it "was an initiative of the ACT Liberal Party."	See above
12	First heard about it from material left in my letterbox	I believe it to be a standard way of making a submission to the group that runs / manages the website	Yes – the Liberal Party	Yes
13	I became aware of the website through a flyer in my letterbox	I believed it was a standard way of making a submission	I didn't know the website was administered by a political party and made an assumption it was a government website	I likely would not have made a submission to the website if I had known it was a political party website.

No.	How did you come to hear about the Have Your Say website?	Did you believe the form on the Have Your Say website was a standard way of making a submission?	Did you know that the Have Your Say website was administered by a political party? If not, who did you believe it was administered by?	Would you have submitted to the inquiry via the form on the Have Your Say website if you knew your details and submission would also be received by a political party?
14	Through irate friends	Don't know if its a standard way but if it gets our grievances across to be heard then that's ok	Yes	Yes
15	Text	Yes	Yes	Yes
16	Media (Canberra Times and Facebook)	No, but having attempted to contact Access Canberra in relation to the ridiculous rate rises and getting nowhere from anywhere else, the Have Your Say website seemed the best option. The "Have Your Say" website provide more information and a better method of making a submission than any current details on the official ACT Government websites.	Yes, don't care who it was administered by, knowing it wasn't administered by Access Canberra or the ACT government gave me some hope it might get somewhere.	Couldn't care less if it was received by a political party. My concern was no one is doing anything about the rates, a website gave the option to get the message across and that was enough for me.

No.	How did you come to hear about the Have Your Say website?	Did you believe the form on the Have Your Say website was a standard way of making a submission?	Did you know that the Have Your Say website was administered by a political party? If not, who did you believe it was administered by?	Would you have submitted to the inquiry via the form on the Have Your Say website if you knew your details and submission would also be received by a political party?
17	I heard it in a news article on ABC Radio (666). The article was about some objections raised by the ALP/Greens in the ACT Assembly in what appeared to be an attempt to derail the enquiry.	Not really. The news article mentioned that the Have Your Say website was created by the Liberal Party to simplify the submission process.	Yes I knew it was administered by the Liberal Party but I also knew it was just a means of simplifying submissions. This was the main thrust of the news article and was the main reason I chose to use this website to make my submission.	Yes, but I have no problem with this. In fact I am glad it has attracted the attention of a political party like the Liberal Party because what the current ACT junta is doing borders on a massive swindle dressed up as some sort of so-called socially progressive program. This gouging of ratepayers needs to be stopped. Their strategy of charging stamp duty for the massive number of units is bad enough, but increased rates and land taxes risks killing the market altogether by punishing first time home owners and small family investors.
18	Advised by friends	No. I also made a submission separately	Yes. I do not support any particular political party – I vote according to issues at each election and have voted for different parties over the years.	Yes, and I do not mind that my information is received by all political parties, for I want them all to know how I feel.

No.	How did you come to hear about the Have Your Say website?	Did you believe the form on the Have Your Say website was a standard way of making a submission?	Did you know that the Have Your Say website was administered by a political party? If not, who did you believe it was administered by?	Would you have submitted to the inquiry via the form on the Have Your Say website if you knew your details and submission would also be received by a political party?
19	From Canberra Times	I am not sure but don't know if there is any other way to make a submission	No. I thought it would be managed by a NGO something like change.org	I would still submit my inquiry because if one side do whatever they like without consulting the victims, I have to talk with another side who offering help.

APPENDIX D- CLERK'S ADVICE TO INQUIRY FROM MR COE'S CHIEF OF STAFF²²

²² This document has been formatted to comply with the Office of the Legislative Assembly's document accessibility policy and its formatting may differ slightly from the original.

Presented by Mr Coe
at hearing.
MK

Coe, Alistair

From: [REDACTED]
Sent: Thursday, 12 April 2018 8:19 AM
To: Coe, Alistair
Subject: FW: Have your say and the rates inquiry [SEC=UNCLASSIFIED]

From: Duncan, Tom
Sent: Tuesday, 27 March 2018 4:56 PM
To: [REDACTED]
Subject: RE: Have your say and the rates inquiry [SEC=UNCLASSIFIED]



Thanks for your email. I generally agree with your record of our meeting, although I don't recall you specifying which website it was going on - rather I thought you indicated that it would be on a website.

So the 2nd line would read that "the Clerk thought that MLAs promoting a diverse range of committee submissions on the internet was reasonable, comparing it...etc."

I would add that having reflected on our discussion, ultimately it will be up to each committee as to whether they accept submissions from 3rd party websites (noting that the Education Committee has accepted those from the Unions ACT website that you showed me) and, if this practice of 3rd party websites being the conduit for all committee submissions (be they unions websites, party websites, Executive websites, etc.) continues to spread, it will ultimately up to the Assembly as to whether this is the best way for Assembly Committees to engage with the ACT Community.

Regards

Tom Duncan

Clerk of the Legislative Assembly for the Australian Capital Territory
P 02 62050191 | F 02 62053109 | M 0419982902 | E tom.duncan@parliament.act.gov.au



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www.parliament.act.gov.au

From: [REDACTED]
Sent: Tuesday, 27 March 2018 12:16 PM
To: Duncan, Tom <Tom.Duncan@parliament.act.gov.au>
Subject: Have your say and the rates inquiry

Hello Tom,

Thank you for your time a fortnight ago when we met to discuss using our Have Your Say website to alert people to the current rates inquiry by the PAC and encourage public submissions. I have been asked by one of our MLAs about this. Before giving any advice I just want to run past you what I took out of our discussion. Is this a reasonable summary?

On 13 March I met with the Clerk to discuss using the Have Your Say site as a way to encourage submissions to the rates inquiry. I explained that the questions would be general and that it would be clearly indicated that the answers would be submitted to the inquiry. I also pointed to a similar approach taken by Unions ACT in encouraging submissions to the insecure work inquiry.

The Clerk thought using the Have Your Say site this way was reasonable, comparing it to MLAs tweeting or using other means to make the public aware of an inquiry and to encourage public submissions.

I can't recall leaving a copy of the proposed survey form, so you might want to see how it was presented on our website: go to Unit & Apartment Rates at www.haveyoursay.net.au

Thank you for this.

Best regards,

[Redacted]

[Redacted]
Chief Of Staff

.....

Office of Alistair Coe MLA
Leader of the Opposition ACT
Legislative Assembly

.....

P: 02 6205 0270
M:0405446912

[Redacted]