

Legislative Assembly for the Australian Capital Territory

CITIZEN'S RIGHT OF REPLY

**Report of the Standing Committee
on Administration and Procedures
August 1993**

RESOLUTION OF APPOINTMENT

On 7 April 1992, the Legislative Assembly for the Australian Capital Territory adopted a temporary order which established the Standing Committee on Administration and Procedures. The temporary order, as further amended by temporary order on 21 May 1992, is as follows:

- 16A (1) A Standing Committee on Administration and Procedures shall be appointed at the commencement of each Assembly to:
- (a) inquire into and report on, as appropriate:
 - (i) the Assembly's annual estimates of expenditure;
 - (ii) matters relating to the privileges of the Assembly which may be referred to it by the Assembly;
 - (iii) the practices and procedures of the Assembly; and
 - (iv) the standing orders of the Assembly;
 - (b) advise the Speaker on:
 - (i) Members' entitlements including facilities and services;
 - (ii) the operation of the transcription service (*Hansard*);
 - (iii) the availability to the public of Assembly documents;
 - (iv) the operation of the Assembly library; and
 - (c) arrange the order of Private Members' business and Assembly business;
- (2) The Committee shall consist of the Speaker and three other members;
- (3) The Speaker shall be the Presiding Member of the Committee;
- (4) The Committee shall have the power to consider and make use of the evidence and records of the Standing Committee on Administration and Procedures appointed during the previous Assembly; and
- (5) The foregoing provisions, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders."

Committee Membership

The Speaker (Presiding Member)
Mr G Humphries, MLA
Mr D Lamont, MLA
Mr M Moore, MLA

NOTE: Mr De Domencio was discharged from the Committee on 23 March 1993
and Mr Humphries appointed in his place.

INTRODUCTION

1. On 2 December 1992, the Standing Committee on Administration and Procedures resolved to inquire into and report on the issue of a citizen's right of reply, and in particular to examine the possible application of the Senate's resolution on this issue to the Assembly. The inquiry was prompted by a letter received by the Committee at its meeting of 13 October 1992 from Ms Szuty, MLA, relating to the possibility of instituting procedures to facilitate a citizen's right of reply to allegations or imputations made against them in the Chamber and under the protection of parliamentary privilege. The Assembly was informed of the Inquiry on 8 December 1992.

2. In conducting the inquiry, the Committee wrote to the Clerk of the Senate on 26 February 1993 seeking information on the Senate's resolution and its effectiveness. Later, in June 1993, the Committee also sought comment from members of the public who had expressed an interest in the right of reply procedure - Mr Gerald Gold and Mr Paul Whalan.

BACKGROUND

The Work of the First Assembly's Standing Committee

3. The issue of a citizen's right of reply has been considered by the predecessor of the Committee in the first Assembly. The result of this work was a recommendation included in the report of the *Inquiry into the proposed Ethics Committee/ Code of Conduct*. In the Report the Committee recommended that:

the Legislative Assembly adopt mechanisms similar to those used in the Senate which allow for the right of reply for private citizens aggrieved during parliamentary debate.¹

1. Standing Committee on Administration and Procedures, *Inquiry into the Proposed Ethics Committee/Code of Conduct*, May 1991, Canberra, p. 31.

4. In making this recommendation, that Committee had examined a resolution passed by the Australian Senate in 1988, and had concluded that:

There are obviously limited opportunities for private individuals to respond to allegations made about them within the parliamentary arena. Due to the damage that may be done to private individuals by allegations made about them within Parliament it is necessary to ensure that statements reflecting adversely on persons are soundly based.²

5. The Report was presented to the Assembly on 6 June 1991, the day that a want of confidence motion in the then Chief Minister was passed. Given the circumstances in the Assembly that day, no motion was moved in relation to the report on its presentation. The Assembly has, therefore, not had the opportunity to formally consider either this recommendation or any other made in that report. No other action has been taken by the Assembly in relation to the recommendation, despite a statement made in relation to Mr Gerald Gold, by the then Speaker, Mr David Prowse, in the closing hours of the first Assembly:

The accusations made by Mr Gold are very serious. However, as Speaker, there is very little that I can do on this matter. ... My intent in making this statement is to place on the record my concern in this matter and to draw members' attention to the possible ramifications of material presented in this parliament.³

The "Gold Incident"

6. The citizen, Mr Gold, named by the then Speaker in his statement, was the subject of a number of allegations made by a Member in the First Assembly. The history of the allegations is a long and complicated one which commenced in April 1991, with a Member alleging that he could demonstrate, on the basis of information from a "consultant" on a Victorian police investigation, a clear link between the X-rated video industry and organised crime. During the debate on this issue, the Member presented documents and named Mr Gold as being involved. Following the

2. Ibid, p. 30.

3. Legislative Assembly for the Australian Capital Territory, *Debates*, vol 19, p. 6272.

debate in the Assembly, some print media gave extensive coverage to the allegations and the debate. Further documents were presented to the Assembly by the Member in August 1991 and Mr Gold sought copies of the presented "police documents" which were purported to establish the links and which named him. Because the documents contained actionable material their publication was initially restricted to Members of the Assembly until, in October 1991, the Assembly authorised publication of the documents to Mr Gold. In late October 1991, a publication order was finally made by the Assembly to enable Mr Gold only to receive the documents. Mr Gold also wrote to Members of the Assembly seeking to explain himself and challenge the accuracy of the documents. Whilst this action informed Members of the matter, it did not have the effect of placing Mr Gold's arguments in relation to the allegations on the public record. This matter was finally resolved when, on 16 September 1992, the Member who had initiated the debate explained to the Second Assembly that the person who had provided him with the information had, in fact, **NOT** been who he had purported to be and apologised to Mr Gold. Mr Gold has since indicated that he accepts the apology. He has also ventured to hope that "... in the future, others will be allowed the right of reply, so that they will not suffer as I have suffered from the malicious allegations made by unscrupulous informers." ⁴

7. Although the matter relating to Mr Gold has been satisfactorily resolved it was only after a considerable period of time and at considerable personal and financial expense to Mr Gold. The incident does pose questions for those who, in the future, face a similar predicament.

THE SENATE'S RESOLUTION

8. The Australian Senate has established a mechanism by which a citizen can address allegations that have been made about them in the Senate. The resolution which provides this mechanism was passed by the Australian Senate in February 1988 as one of 11 resolutions passed in relation to parliamentary privilege. The resolutions were proposed by the Manager of Government Business and were conceived in response to the Joint Select Committee on Parliamentary Privilege's Final Report of 1984. They covered a spectrum of issues ranging from procedures for the protection of witnesses, the criteria relating to contempt and the giving of precedence to a motion

4. Letter from Mr Gerald Gold to the Speaker, dated 21 September 1992.

relating to privileges, matters constituting contempts, protection of persons referred to in the Senate, exercise of freedom of speech and the reference to Senate proceedings in court proceedings. Of this package of resolutions, the first Assembly Committee considered only that which related to the protection of persons referred to in the Senate (Resolution 5).

9. The resolution (attachment A) is concerned primarily with prescribing a set of procedures by which a citizen can seek to have the President and, in turn, the Committee of Privileges consider a submission which responds to comments made in the Senate in relation to that person. The submission can ultimately be placed on the parliamentary record by being incorporated in *Hansard*. An individual making a submission in accordance with the procedures established by the resolution is not guaranteed that the response to the Senator's comments will be incorporated. The Senate, through the Committee of Privileges, retains the right to act or not on the submission and the Senate maintains the ultimate power of rejecting or accepting the Privileges Committee's report on the matter.

10. The Senate Committee of Privileges in its 35th Report considered the Committee's work since the passage of the Privilege Resolutions on 25 February 1988. Chapter 2 considers the application of Resolution 5. Apart from explaining the methodology employed by the committee in examining issues referred to the committee under this Resolution, there is discussion of the general principles used by the committee as a framework for the application of the Resolution. The Report notes:

...the committee has considered submissions as analogous to Senators' personal explanations or claims of misrepresentation, and has deliberated with this factor in mind.⁵

11. As with Senator's personal explanations, the committee requires that the submissions from citizens are concise and strictly relevant. The committee also notes that it plays no role in determining the truth or otherwise of the statements made in the Senate or of the submissions made in reply.

5. Senate Standing Committee of Privileges, *Report on Committee's Work Since Passage of Privilege Resolutions of 25 February 1988* (35th Report), Canberra, p. 6.

12. This resolution should not be considered in isolation. As mentioned previously, the resolution is part of a larger package of resolutions concerned with parliamentary privilege and the protection of witnesses and should properly be considered in that context. It is significant that another of the resolutions passed relates to the exercise of freedom of speech (attachment B). This resolution (Resolution 9) lists for Senators a number of matters that should be considered prior to speaking in the Senate, under the protection of parliamentary privilege, particularly when making allegations against individuals.

OTHER PARLIAMENTS

13. The Senate is the only Australian House, to date, that has adopted a formal mechanism which gives individuals a means by which they may, if the Senate so determines, respond to allegations that have been made about them personally under the protection of parliamentary privilege. The House of Representatives Standing Committee on Procedure tabled a report in June 1991 which recommended that a similar mechanism be adopted by the House. It has not, as yet adopted any such procedure. In that report, the committee considered the 1989 reports of the House of Commons Select Committee of Procedure and the Western Australian Parliamentary Standards Committee, both of which recommended against the introduction of a formalised reply procedure for citizens.

ISSUES

Freedom of Speech versus Right of Reply

14. The power and protection of parliamentary privilege conferred on Members when speaking in the Chamber, is central to the issue of a citizen's right of reply.

15. Parliamentary privilege is a term which covers the special rights and powers that have been afforded to or hard won by parliament, to protect members in pursuing their responsibilities and to enable them to do so fearlessly. They have developed over centuries and, in the Australian context, the passage of the Commonwealth *Parliamentary Privileges Act 1987* marked a significant declaration of these privileges and powers. This Act relates the powers, privileges and immunities

of both the Senate and the House of Representatives to those in force under section 49 of the Constitution, which in turn links those of each House to those that existed at federation in the House of Commons of the Parliament of the United Kingdom and its members and committees unless otherwise declared by the Parliament. The Assembly's powers, privileges and immunities are linked by virtue of section 24 of the *Australian Capital Territory (Self-Government) Act 1988* to those that exist with the House of Representatives and its members and committees.

16. The privilege that applies in relation to freedom of speech to comments made in the Chamber is derived from Article 9 of the Bill of Rights of 1688, which declares:

That the freedom of speech and debates or proceedings in Parliament ought not be impeached or questioned in any court or place out of Parliament.⁶

17. It is argued in *House of Representatives Practice* that freedom of speech is "... by far the most important privilege of Members"⁷. Without this privilege Members would be silenced and prevented from exploring controversial issues and parliaments would be reduced to "... polite but ineffectual debating societies."⁸. However, the need to explore controversial issues without any shackles must be balanced against the rights of individuals to maintain a reputation and standing within a community and not have it taken from them without just cause. The Senate's resolution 9 relating to freedom of speech clearly states the responsibility on Senators in exercising their freedom of speech. This resolution, together with resolution 5 relating to a citizen's right of reply, represents a balance between a Senator's rights and responsibility to inform the Senate of concerns that they have in relation to an individual or event and the citizen's right to protect his or her reputation. The existence of these resolutions does not suggest that a Senator would seek to abuse the privilege of freedom of speech to deliberately malign an innocent individual, but merely that, with the best will in the world, as the "Gold Incident" in the Assembly demonstrates, that mistakes can and do occur. Without a means by which aggrieved individuals can seek to correct the record, and it may be just in terms of mistaken identity, that mistake may never be corrected.

6. *House of Representatives Practice*, Second Edition, AGPS, Canberra, 1989, p. 688.

7. Loc. cit.

8. Loc. cit.

Current Procedures for Redress

18. It could be argued that under the Assembly's current practices and procedures there exists means by which an individual can seek redress, by, for example, approaching another Member to plead his or her case in the context of parliamentary debate. This is indeed the case and, in fact, has been used in one example cited by the Senate Committee of Privileges in its report on the operation of the 1988 privilege resolutions. However, it relies on an individual being able and willing to approach a Member and then being able to convince that Member to represent their case to the Assembly. To achieve this means of redress a Member may feel that he or she should be satisfied as to the veracity of the individual's reply and this may not always be possible. As already noted, under the Senate's resolution 5, the Committee of Privileges does not concern itself with the accuracy or otherwise of the citizen's submission and as a Committee examines the case, there is not a direct link between a particular Senator and individual.

Time Constraints

19. One of the major reasons put forward by the House of Commons Select Committee on Procedure against adopting a mechanism to enable citizens the right of reply to allegations made by members under the protection of parliamentary privilege was that the time taken to process the case robbed the rebuttal of any immediacy⁹. The Senate Committee of Privileges certainly identifies timing as a problem that has occurred in the application of resolution 5. However, the delays experienced by the Senate have arisen primarily out of the individual failing to respond to queries raised by the committee. The committee "... has decided that ... if no response to the committee's inquiries is received within three months, it should consider the matter closed and report accordingly to the Senate..."¹⁰.

20. Applying some time parameters to the exercise of the right of reply would certainly be one way to combat the immediacy problem. However, in developing time constraints, consideration must be given to the right of an individual to use the right of reply for some period after the allegations have been made. The Senate Committee decided to exercise a deadline on the receipt of information from

9. House of Representative Standing Committee on Procedure, *A Citizen's Right of Reply*, June 1991, Canberra, p. 5.

10. Senate Standing Committee on Privileges, p. 8.

individuals after the committee has commenced examining the individual's first submission. It has not elected to apply a similar deadline to the placing of a submission with the President.¹¹. In the report the Senate Committee of Privileges cites an example of a citizen who requested the right of reply on an allegation that had been made over 12 months before the submission was made. It would appear that for the individual it is not always necessary for the rebuttal to be immediate and as the mechanism is primarily aimed at providing a means of response, it should not be a major concern of the parliament when that response is made, although it is a concern that once the process of response has been initiated, no long delays are acceptable.

Judgment of a Member

21. Another concern of the House of Commons report is that in allowing any rebuttal is "somebody ... passing judgement on the Member" ¹². This charge is adequately dispelled by the Senate Committee in the 35th Report where it is made clear that the committee in making a recommendation that " ... a right of reply be given, is not making a finding of wrong doing on the part of a Senator." ¹³. The process of the right of reply as granted in the Senate is one of placing on the record a different point of view or further explanation of that expressed, without any analysis as to which is the correct. It is a process by which Senators have the opportunity to consider another aspect of the situation and it is not acceptable for the submission to ' ... contain any statements that may further aggravate the situation. " ¹⁴.

22. The Senate resolution 5 clearly does not act as a means by which Senators can be charged and found guilty of wrongdoings either by his or her peers or the citizen concerned in the matter. No consideration is given to motives or truth but only whether a citizen should be granted the right of reply.

Failure to Use the Procedure - Guilty?

23. The reverse of the above argument is also considered by the House of Commons Committee to be a concern, ie that a citizen who was the subject of the allegations, but who failed to take advantage of any procedure which made available to them the right of reply, would automatically be judged as being guilty of the

11. Ibid, p. 9.

12. House of Representatives Standing Committee, p. 5.

13. Senate Standing Committee on Privileges, p. 6.

14. Ibid, p. 6.

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14. Ibid, p. 6.

allegations. This could be argued, but it is difficult to deny some citizens access to a means of explanation on the basis that others would not use the available mechanism to explain themselves and therefore it could be considered that the allegations were true. Any responsible interpretation of motives, for failure to use the right of reply mechanism, would surely include the possibility that the citizen concerned sees the allegations as being so ludicrous as not to warrant the effort of reply, particularly if the allegations had not received wider publication.

DOES THE ASSEMBLY NEED IT

24. Although other forms of redress do exist for a citizen who believes that they have been the subject of unfair allegations in the Assembly those mechanisms require the intervention of a Member on behalf of that citizen. This may act as a disincentive for some citizens who may hesitate to have a direct link made between themselves and a member who represents an identifiable political agenda. Further, such representation may be difficult to gain from a member who may be mindful that in representing an aggrieved person's interests they may also be identified with that person.

25. By establishing a citizen's right of reply, the Assembly would be ensuring that it gave persons named in debate, under the protection of parliamentary privilege, a direct means by which to respond to those allegations. The Assembly would enhance its image within the community by providing such a device, without abrogating its responsibility to administer its own affairs. The protection of privilege would remain to enable Members to fearlessly pursue necessary and controversial issues and yet those individuals who may feel that they have been unfairly attacked have a means open to them which would enable them to respond to that attack, if the Assembly so ruled. It would remain the Assembly's prerogative as to whether a citizen should or needs to be granted the right of reply. Further, the Assembly can act to ensure that the right of reply is not abused or used as a platform to further any campaign raging outside the arena of the Assembly. To marry any resolution to establish a mechanism for the right of reply with one which reminds Members of their responsibilities in using freedom of speech in the parliamentary context would reinforce the necessary balance between a citizen's rights and a Member's responsibilities that should exist with the responsible use of privilege.

WHAT FORM SHOULD IT TAKE

26. Discussion to date has focussed on the Senate's resolutions in relation to a citizen's right of reply and whether it should be applied to the Assembly to grant a citizen the right of reply. However, the Committee did consider variations to the Senate's resolution and other forms of redress. The proposals considered were, in the main, proposed by the two citizens, Mr Gold and Mr Whalan, who wrote to the Committee in relation to a citizen's right of reply.

27. Mr Gold's submission focussed on possible changes to the Senate's resolution. These changes included:

- omitting subsection (2) which gives the Committee the power to not consider a submission, given that the Speaker will have already determined whether a submission is trivial, frivolous, vexatious or offensive and the practicality of the Committee considering it;
- the Committee discussing with the Member who made the statement, the citizen's response and as a result the Member withdrawing the reference; and
- the Committee advising the citizen as to the progress of the inquiry.¹⁵

28. The Committee considered these proposals and determined that although all three had merit it was not appropriate to include any in the Assembly's resolution.

29. Firstly, in omitting subsection (2), there would be a shift in emphasis and responsibility in the parliamentary context. The Speaker does not normally have the power to direct the Assembly, or one of its Committees, to conduct an inquiry into a certain issue, as that is the Assembly's prerogative. By omitting subsection (2) from the resolution, this power would indeed be given to the Speaker and the Committee decided that any benefit to be gained was not sufficient to warrant this. Therefore, paragraph (2) should remain in the resolution.

30. The second proposal made by Mr Gold was for the Committee to confer with the Member who named the citizen and that Member may withdraw the remarks. Under the Senate's resolution there is already a provision for the committee to confer

15. Letter from Mr Gerald Gold to Speaker, dated 9 June 1993.

with both the citizen and the Member. The Committee considered that any provision to increase the committee's role in this aspect had the potential to draw the Committee into conflict and require it to act as an arbitrator between accusations made by a Member and claims made by the citizen named. As the Committee envisages the right of reply to be merely a mechanism by which a person named by a Member can place on the public and parliamentary record his or her position, the Committee was reluctant to make any changes to the resolution that would or could alter this. The Committee therefore determined not to add this proposition to the resolution.

31. The third and final of Mr Gold's proposals relates to making provision for the Committee to advise the citizen of the progress of the inquiry. The Committee believes this proposal is of considerable importance, but believes that the resolution used in the Senate and under consideration for adoption by the Assembly allows sufficient scope for this to be the case. In examining the individual's submission and preparing their report the Committee would be in contact with the individual concern. Any further advice that the individual may want could be discussed with the Secretary to the Committee. The Committee did not believe that it was necessary to make specific provision for this in the resolution, given that this discussion would make it clear that the Committee believes that regular communication between the citizen concerned and the Committee examining the issue is necessary.

32. The second set of proposals in relation to the establishment of a citizen's right of reply were made to the Committee by Mr Paul Whalan. Mr Whalan is a former Member of the Legislative Assembly for the Australian Capital Territory and has expressed an interest in establishing a mechanism by which a citizen has the right to reply. Mr Whalan made the following suggestions:

- when a citizen is the subject of allegations within the Assembly and these allegations are recorded in *Hansard*, the citizen be given a right of reply either by way of submission to the Assembly or by appearance before the Assembly;

- when the Speaker judges a statement by a Member of the Assembly to be potentially damaging to the reputation of a citizen, then the Speaker be authorised to expunge the remarks from the records of the Assembly and thus deny the remarks the protection of privilege;

when two-thirds of the Assembly judge a statement by a Member of the Assembly to be potentially damaging to the reputation of a citizen, then the Assembly may determine to expunge the remarks from the records of the Assembly and thus deny the remarks the protection of privilege; and

when a citizen has been defamed by a Members of the Assembly under the protection of parliamentary privilege and those remarks have been recorded in the records of the Assembly, then the Assembly may act to require payment by the Assembly member of damages to the citizen.¹⁶

33. The Committee has considered these proposals and has concluded that in the main it is difficult to implement them to have the stated effect.

34. The first proposal is essentially that which is being considered by the Committee in examining the Senate's resolution, with the addition that aggrieved citizen's may appear before the Assembly. Parliaments have the power to call persons to the bar of the house when that member has offended against the House. Also other persons have been called to accept a vote of thanks or congratulations. The Committee therefore, in considering this proposal, concluded that an appearance before the Assembly could unnecessarily open the issue up for debate. It could also be seen as a citizen having a case to answer to and therefore not in the spirit of establishing a mechanism by which a citizen can reply. Individuals may also feel threatened or intimidated by the requirement to appear before the Assembly and this again is, in the Committee's opinion, against the spirit of the right of reply. For these reasons the Committee decided against offering an appearance before the Assembly as an alternative to an individual making a submission. It would still be open for the Assembly to do so should it think fit.

35. The second and third proposal made by Mr Whalan offers essentially the same outcome with different driving forces - in the first instance it is the Speaker who authorises the removal of the remarks from *Hansard*, and in the second it is a two-thirds majority of the Assembly. Mr Whalan argued that both would deny the remarks the protection of privilege. The Committee therefore considered these proposals jointly.

16. Letter from Mr Paul Whalan to Speaker, dated 27 May 1993.

36. The Committee believes that the argument is flawed in its concept that parliamentary privilege would be denied if the remarks were expunged from *Hansard*. Absolute privilege protects a Member when making the remarks in the Chamber and it could be argued that those remarks attract qualified privilege if they are repeated outside the Chamber in context, in good faith for public information and with the absence of malice. The fact that it is removed from *Hansard* does not mean that the statement is not covered by absolute privilege. The difference between absolute and qualified privilege is that absolute privilege protects the maker of the statement from legal action whereas qualified privilege exists where a person is not liable to an action for defamation if the conditions described above are fulfilled. Removing the remarks from *Hansard* does little to affect the privilege that a statement attracts, but may have a significant impact on the dispersal of the allegations or accusations.

37. The Committee was also of the view that these two proposals, together with the final one made by Mr Whalan, would impose considerable restrictions upon a Member's freedom of speech. This, as previously discussed, is not the intention of a right of reply and the Committee did not accept either of the second or third proposal as providing citizen's with an effective means of redress.

38. The Committee was particularly concerned about Mr Whalan's last proposal. The Committee considered the proposal impractical, unwise, and one that suggests the Assembly exercise a power it probably does not possess. Subsection 24(4) of the *Australian Capital Territory (Self-Government) Act 1988* states:

(4) Nothing in this section empowers the Assembly to imprison or fine a person.¹⁷

The Committee does not believe that in order for a citizen to seek redress for statements made in relation to him or her under the protection of parliamentary privilege, the powers of the Assembly should be expanded beyond those that currently exist or those which exist in the Commonwealth Parliament. The Assembly is a legislature and should not be expanding its powers into the judicial system.

39. The Committee also examined the possibility of expanding the right of reply to corporations rather than limiting it to private individuals, as the Senate resolution does. It was of the view that corporations can be affected in much the same way as individuals if adverse statements are made about them under the protection of parliamentary privilege. Businesses cited in debate may suffer a downturn if those

17. *Australian Capital Territory (Self-Government) Act 1988*, (Commonwealth)

comments are perceived to be negative and the Committee was of the view that a spokesperson for the corporation should have the right to reply to those comments.

CONCLUSION

40. The Committee has considered the arguments that have been made against the introduction of a citizen's right of reply and acknowledges that there is some validity in them. It has also considered the experience of the Senate, since 1988, in using resolution 5 and a number of proposals to alter this resolution and suggestions as to other forms of redress. The Committee has **concluded** that the potential benefits to the citizens that the Assembly serves, outweigh the drawbacks that may exist in relation to the process.

41. The Committee believes that the Senate's resolution is suitable for use in the Assembly. In the light of the Senate's experience with the 1988 resolutions relating to the privilege the Committee considers that the following guidelines are necessary for the effective implementation of a process of a citizen's right of reply:

- . that the procedure relate only to statements made in the Chamber;
- . that the procedure be available both to private individuals and corporations;
- . that the content of the reply be succinct, strictly relevant and include nothing that would aggravate the situation;
- . that a parliamentary body consider the submissions and in doing so adopt the Senate's practice of not attempting to determine the truth or otherwise of the initial allegation and subsequent response;
- . that a time limit of 3 months apply to any request by the parliamentary body for further submissions from the citizen or corporation; and

that the mechanism of the right of reply be established in conjunction with a resolution outlining the responsibilities of a Member in exercising freedom of speech.

42. The Committee, therefore, **recommends** that the Assembly pass the following resolutions in relation to the issues of a citizen's right of reply and freedom of speech: That -

1. Protection of persons and corporations referred to in the Legislative Assembly

- (1) Where a person or corporation who has been referred to by name, or in such a way as to be readily identified, in the Assembly, makes a submission in writing to the Speaker:
 - (a) claiming that the person or corporation 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 the person's privacy has been unreasonably invaded, by reason of that reference to the person or corporation; and

- (b) requesting that the person or corporation be able to incorporate an appropriate response in the parliamentary record,

if the Speaker is satisfied:

- (c) that the subject of the submission is not so obviously trivial or the submission so frivolous, vexatious or offensive in character as to make it inappropriate that it be considered by the Standing Committee on Administration and Procedures; and
 - (d) that it is practicable for the Standing Committee on Administration and Procedures to consider the submission under this resolution,

the Speaker shall refer the submission to that Committee.

- (2) The Committee may decide not to consider a submission referred to it under this resolution if the Committee considers that the subject of the submission is not sufficiently serious or the submission is frivolous, vexatious or offensive in character, and such a decision shall be reported to the Assembly.
- (3) If the Committee decides to consider a submission under this resolution, the Committee may confer with the person or corporation who made the submission and any Member who referred in the Assembly to that person or corporation.

- (4) In considering a submission under this resolution, the Committee shall meet in private session.
- (5) The Committee shall not publish a submission referred to it under this resolution or its proceedings in relation to such a submission, but may present minutes of its proceedings and all or part of such submission to the Assembly.
- (6) In considering a submission under this resolution and reporting to the Assembly the Committee shall not consider or judge the truth of any statements made in the Assembly or of the submission.
- (7) In its report to the Assembly on a submission under this resolution, the Committee may make either of the following recommendations:
 - (a) that no further action be taken by the Assembly or by the Committee in relation to the submission; or
 - (b) that a response by the person or corporation who made the submission, in terms specified in the report and agreed to by the person or corporation and the Committee, be published by the Assembly or incorporated in *Hansard*.

and shall not make any other recommendations.

- (8) A document presented to the Assembly under paragraph (5) or (7):
 - (a) in the case of a response by a person or corporation who made a submission, shall be succinct and strictly relevant to the questions in issue and shall not contain anything 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 corporation, or unreasonably invading a person's privacy, in the manner referred to in paragraph (1); or
 - (ii) unreasonably adding to or aggravating any such adverse effect, injury or invasion of privacy suffered by a person or corporation.
- (9) A corporation making a submission under this resolution is required to make it under their common seal.

2. Exercise of Freedom of Speech

- (1) That the Assembly considers that, in speaking in the Assembly or in a committee, Members should take the following matters into account:

- (a) the need to exercise their valuable right of freedom of speech in a responsible manner;
 - (b) the damage that may be done by allegations made in the Legislative Assembly to those who are the subject of such allegations and to the standing of the Legislative Assembly;
 - (c) the limited opportunities for persons other than members of the Legislative Assembly to respond to allegations made in the Legislative Assembly;
 - (d) the need for Members, while fearlessly performing their duties, to have regard to the rights of others; and
 - (e) the desirability of ensuring that statements reflecting adversely on persons are soundly based.
- (2) That the Speaker, whenever the Speaker considers that it is desirable to do so, may draw the attention of the Legislative Assembly to the spirit and the letter of this resolution.

3. Continuity of Resolutions

That these resolutions continue in force for the term of the Second Assembly.

Roberta Mc Rae, OAM, MLA
Presiding Member

24 August 1993

ATTACHMENT A

PARLIAMENTARY PRIVILEGE

EXTRACTS

RESOLUTIONS AGREED TO BY THE SENATE ON 25 FEBRUARY 1988

5. Protection of persons referred to in the Senate

- (1) Where a person who has been referred to by name, or in such a way as to be readily identified, in the Senate, makes 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 the person's privacy has been unreasonably invaded, by reason of that reference to the person; and
 - (b) requesting that the person be able to incorporate an appropriate response in the parliamentary record,

if the President is satisfied:

- (c) that the subject of the submission is not so obviously trivial or the submission so frivolous, vexatious or offensive in character as to make it inappropriate that it be considered by the Committee of Privileges; and
- (d) that it is practicable for the Committee of Privileges to consider the submission under this resolution,

the President shall refer the submission to that Committee.

- (2) The Committee may decide not to consider a submission referred to it under this resolution if the Committee considers that the subject of the submission is not sufficiently serious or the submission is frivolous, vexatious or offensive in character, and such a decision shall be reported to the Senate.
- (3) If the Committee decides to consider a submission under this resolution, the Committee may confer with the person who made the submission and any Senator who referred in the Senate to that person.
- (4) In considering a submission under this resolution, the Committee shall meet in private session.

- (5) The Committee shall not publish a submission referred to it under this resolution or its proceedings in relation to such a submission, but may present minutes of its proceedings and all or part of such submission to Senate.
- (6) In considering a submission under this resolution and reporting to the Senate the Committee shall not consider or judge the truth of any statements made in the Senate or of the submission.
- (7) In its report to the Senate on a submission under this resolution, the Committee may make either of the following recommendations:
 - (a) that no further action be taken by the Senate or by the Committee in relation to the submission; or
 - (b) that a response by the person who made the submission, in terms specified in the report and agreed to by the person and the Committee, be published by the Senate or incorporated in *Hansard*.and shall not make any other recommendations.
- (8) A document presented to the Senate under paragraph (5) or (7):
 - (a) in the case of a response by a person who made a submission, shall be succinct and strictly relevant to the questions in issue and shall not contain anything 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 paragraph (1); or
 - (ii) unreasonably adding to or aggravating any such adverse effect, injury or invasion of privacy suffered by a person.

PARLIAMENTARY PRIVILEGE

EXTRACTS

RESOLUTIONS AGREED TO BY THE SENATE ON 25 FEBRUARY 1988

9. Exercise of Freedom of Speech

- (1) That the Senate considers that, in speaking in the Senate or in a committee, Senators should take the following matters into account:
 - (a) the need to exercise their valuable right of freedom of speech in a responsible manner;
 - (b) the damage that may be done by allegations made in Parliament to those who are the subject of such allegations and to the standing of Parliament;
 - (c) the limited opportunities for persons other than members of Parliament to respond to allegations made in Parliament;
 - (d) the need for Senators, while fearlessly performing their duties, to have regard to the rights of others; and
 - (e) the desirability of ensuring that statements reflecting adversely on persons are soundly based.
- (2) That the President, whenever the President considers that it is desirable to do so, may draw the attention of the Senate to the spirit and the letter of this resolution.