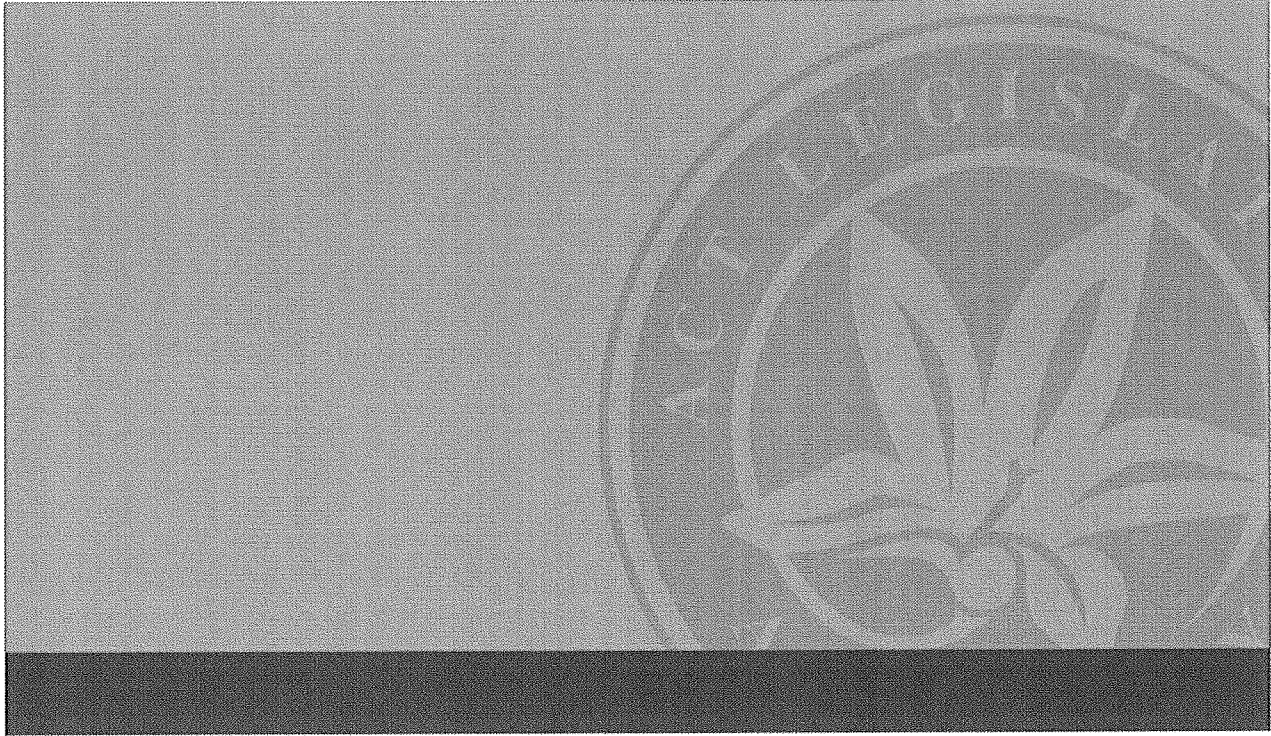




LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY



**APPLICATION FOR CITIZEN'S RIGHT OF REPLY:
MR JORIAN GARDNER**

STANDING COMMITTEE ON ADMINISTRATION AND PROCEDURE

JUNE 2014

REPORT 2

COMMITTEE MEMBERSHIP

Vicki Dunne MLA (Chair)

Mr Alistair Coe MLA

Mick Gentleman MLA

Shane Rattenbury MLA

(Brendan Smyth MLA was discharged from the committee for consideration of this report)

SECRETARIAT

Tom Duncan (Secretary)

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RESOLUTION OF APPOINTMENT

In 1995 the Legislative Assembly for the Australian Capital Territory ('the Assembly') amended Standing Order 16, which established the Standing Committee on Administration and Procedure ('the Committee').

Standing Order 16 authorises the Committee to inquire into and report on, among other things, the practices and procedure of the Assembly.

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RECOMMENDATION

RECOMMENDATION 1

- 1.5 The committee recommends that a response by Mr Jorian Gardner, in the terms specified in Appendix A, be incorporated in *Hansard*.

APPLICATION FOR CITIZEN'S RIGHT OF REPLY: MR JORIAN GARDNER

- 1.1 On 28 April 2014 the Speaker of the Legislative Assembly, Mrs Vicki Dunne MLA, received a submission from Mr Jorian Gardner seeking redress under the resolution of the Assembly of 4 May 1995, as amended 6 March 2008, relating to a citizen's right of reply (Continuing Resolution 4).
- 1.2 The submission referred to comments made by a number of members in the Assembly on 25 February 2014. The Speaker accepted the submission for the purposes of the continuing resolution and referred it to the Standing Committee on Administration and Procedure.
- 1.3 The committee met on 22 May 2014 and, pursuant to paragraph (3) of Continuing Resolution 4, decided to consider the submission. The committee resolved to recommend that the response agreed to by the committee and Mr Gardner be incorporated in *Hansard*.
- 1.4 The committee draws attention to paragraph (6) of the continuing resolution which requires that, 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.

Recommendation 1

- 1.5 **The committee recommends that a response by Mr Jorian Gardner, in the terms specified in Appendix A, be incorporated in *Hansard*.**



Mrs Vicki Dunne MLA
Chair

3 June 2014

Appendix A Response by Mr Jorian Gardner

I refer to a sitting of the ACT Legislative Assembly, Tuesday 25 February 2014, that saw a motion of no confidence debate in Minister Joy Burch raised by Mr Jeremy Hanson, Member for Molonglo and Leader of the Opposition.

During the some two-hours or so of debate, I was the subject of personal attack and criticism on a number of occasions by some members. It was my role as Director of the Fringe Festival which was under scrutiny, an event that recently ran alongside the National Multicultural Festival and is funded through ArtsACT - arts and multicultural affairs both being portfolios of Minister Burch. It is clear to those who were in attendance at this extraordinary first sitting of the 2014 ACT Legislative Assembly or by any reasonable persons reading of the Hansard record that I, Jorian Gardner, have been the subject of clear, direct and personal attack and criticism and that my privacy has been unreasonably invaded by references made by some MLA's.

- Mr Hanson (MLA) refers to Minister Burch on several occasions: "she appointed the director without due process." ".....The minister ignored due process and appointed Jorian Gardner as the director of the fringe." ".....She funded this event from a public purse and she appointed the director without due process."

Ms Jones (MLA): "He was appointed without process." "...because it was the well-known modus operandi of the director who was given the job without due process." ...There should have been an acknowledgement that this director, with a long litany of previous poor judgement, should not have been given this directorship." "...to a director known to the general community as having questionable judgement, and considered in the arts community as being poorly trained"

These statements and similar on the record are untrue and misleading. This implies there was something non compliant in my appointment. No laws or rules of ACT Government process were broken and even members of the ACT Liberal Opposition seem to agree therefore contradicting their own leader and other members on this point. I refer to a statement in this debate by Mr Brendan Smyth (Libs MLA) referring to Fringe in the ACT Government budget. "... Funding was deliberately placed as a separate line item in the budget intended to allow for more flexibility in employing the director." This statement is correct and shows that it was the Minister and her department's right to appoint me. I have complied with an ACT Government Deed of Grant as with any other contractor to government in a similar situation. Any other individual and organisation also had the legal right to lobby the government for this appointment and the fact they didn't take advantage of this opportunity available to them should not reflect poorly on me because I in fact did. These statements have adversely affected me in reputation and dealings in the arts and business community by inferring something "shadowy" has occurred when no such thing has happened at all.

I object to the suggestion that I should not have even been considered to be appointed or that I have poor training or judgement. To justify this I simply say that at the time of my appointment I had directed six Fringe Festivals in Canberra; produced, directed, and acted in hundreds of other festival and theatrical related productions; held senior positions with the Museum of Contemporary Art, The Australian Theatre Institute, & ArtsLink; edited the Australian Performing Arts Directory and been an arts journalist for well over a decade including six years as the arts editor of a prominent local Canberra publication. My first professional production was in 1988. I stand by my record.

- Mr Hanson (MLA) on my appointment: "...Mr Gardner was being given \$20,000 by the minister to run the festival". This and other similar statements imply I was actually paid this amount personally to run the event - I was not. It was the cash budget for the event that I administered. I in fact was not paid a salary, ran the event for free and as producer took a loss in the many thousands. This money went to ACT artists. This continual reference adversely affects my dealings with others who may think I have been untrue regards my budgetary arrangements - I have not. Any level headed person could see that this small amount of money to produce a major four-day event in Civic (plus logistic support) leaves little for the event producer and why (at no cost to the ACT taxpayer I may add) the event was in the negative.
- Members referred to some problems I have had in my personal life which had zero to do with my appointment or my job running Fringe 2014.

Mr Smyth (MLA): "She settled for a festival director towards the end of last year who faced arrest for missing his court date not once but twice".

This was a cheap attack that had issues relating to my health that have not been revealed to the public and nor should they be unless I reference them and was also a more complex legal situation that was not to be dismissed in such a quick statement. These other statements should not have been made and had members been aware of the circumstances surrounding the minor offence and my health I am convinced they would not have been.

Mr Smyth (MLA): "... (he) lost his job at a radio station for distastefully commenting that the former Prime Minister was "up skirted" by a "penis cam" in a cabinet meeting.

This statement is incorrect and, again, has nothing to do with my appointment as Fringe Director. I did not leave my job in radio because of this issue. This incident in fact occurred a fair while before I resigned my job in local radio. Even simply by evidence of time-line this statement is factually incorrect and both statements have clearly invaded my privacy having little to do with the debate at hand.

- Several factually incorrect and irrelevant statements referring to me personally and the management of my event, its history and my appointment were made. Amongst the many are:

Ms Jones (MLA): "One member of the Canberra arts scene said his work is usually base, unsophisticated and embarrassing." There was no reference to any individual here and is a value judgment. If I am to be "named and shamed" by the Assembly - embarrassed, defamed and made fun of in public; in parliament - by the members - why are unattributed judgments like this allowed to be referenced?

Ms Jones: "A fringe festival is meant to be related to the main event; some would even say that it should complement the main event. Fringe festivals were born out of the experience of the Edinburgh Fringe Festival, which was an opportunity for those who could not be on the main stage to perform in a low-cost environment. It should be a chance for others who cannot be a Timomatic on the main stage to get a gig and show their talent. The performances, if they are to be directed and carefully selected, should have a narrative that complements the main event."

This is not fact. If members have no competence in arts practice and are not aware of how an event like this fits into a cultural or historical landscape, how can any of their assessments of the event be taken seriously. By making incorrect statements about the event, its history and how it should be run on the public record, a person who reads this as fact could therefore mistakenly assume I have not done my job properly, thus adversely affecting my reputation. Members should not make comment on cultural areas they have not been correctly briefed on.

- Mr Hanson (MLA) referred to the following statement by the head of multicultural forum. "...(*the event) insulted quite a few people along the way, definitely the German community and of course our friends in the Jewish community, it is just simply unacceptable." The person who made this statement was not at the event. I have spoken with senior representatives of each of the communities referred to, and they had no complaint to make to me. This statement is untrue. This statement adversely affects my reputation amongst this community and should not remain unchallenged on the public record.
- It has been referred to by members, and therefore has damaged me personally and professionally, that my arts practice is offensive and has racially vilified others and that somehow I need to be "overseen" - something no other artist in the ACT is subjected to. I refer to Mr Shane Rattenbury's statement who demonstrates clearly the odds at which the ACT Liberal Opposition in the references to me and my practice are with their federal counterparts.

Mr Rattenbury: "The relevant part of the Racial Discrimination Act which Mr Wilson and the Liberals have vowed to repeal is section 18C. It says it is unlawful for someone to do a public act that is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or group of people, and the act is done because of the race, colour, or national or ethnic origin of the other person or of some or all people in the group. What an irony that this is the exact claim the local Liberals are now trying to

prosecute. At the federal level, the Liberals want to repeal the protections against racial vilification, and yet today they are trying to prosecute a case for racial vilification.”

Career-wise these statements and others made during this debate are incredibly damaging to have on the public record for me and there can be no doubt those words have had an effect on me professionally and most importantly personally. This was but one event I do, and my career depends on being able to apply and lobby for funding for projects from both business and government. Given the extremely hurtful and adverse personal and professional statements made by members of the ACT Legislative Assembly who are respected in the community and their obvious government ties, my future business opportunities in some areas are now severely limited. Such political interference has damaged my reputation and my dealings with government and arts community contacts.

Members of the ACT Legislative Assembly should be made aware that their words about non-elected, ordinary members of the public whether negative or positive carry weight. Scoring political points at the expense of someone’s career and well-being was never the intended use of privilege and certainly doesn’t live up to the high standards that I, as a citizen of the Australian Capital Territory, expect from my elected representatives.