



ETHICS COMMITTEE

Report No. 158

Report on a Right of Reply No. 28

Introduction and Background

1. The Legislative Assembly provides a right of reply to persons and corporations who are the subject of adverse comment in Parliament. The Ethics Committee (the committee) has responsibility for advising the Assembly regarding submissions for a right of reply.
2. The right of reply relates to statements made by members under parliamentary privilege. Persons or corporations who are named, or referred to in such a way as to be readily identified and who consider their reputation has been adversely affected, may request a right of reply.

Procedure

3. Chapter 46 of the *Standing Rules and Orders of the Legislative Assembly*, effective from 31 August 2004 (the *Standing Orders*), sets out the operation of the right of reply for persons and corporations and the procedure for the committee to follow when considering submissions.
4. Standing Order 282(5) provides that the committee is not to consider or judge the truth of any statements made in the House or the submission when considering a submission for a right of reply.
5. Under Standing Order 283, the committee may recommend—
 - that no further action be taken by the committee or the House in relation to the submission; or
 - that a response by the person who made the submission, in terms specified in the committee's report and agreed to by the person or corporation and the committee, be incorporated in the Record of Proceedings or published in some other manner.

Referral

6. The Mayor of Mackay Regional Council (the Council), Cr Deirdre Comerford, wrote on behalf of the Council to Speaker Wellington on 3 September 2015 to seek a citizen's right of reply to statements made:
 - in a Public Hearing held by the Finance and Administration Committee as part of their inquiry into the Industrial Relations (Restoring Fairness) and Other Legislation Amendment Bill 2015 (the Bill) on 25 May 2015; and

- by the Members for Ferny Grove and Murrumba during the second reading of the Bill on 4 June 2015.

7. On 10 September 2015, Speaker Wellington referred the Council's request for a citizen's right of reply, on behalf of the Council, to the committee for consideration. Mr Speaker was of the opinion that the submission would be a practical subject for a right of reply, however, left it to the committee to determine whether the Council is a corporation within the meaning of Chapter 46 of the Standing Orders. The Standing Orders do not provide a definition of "corporation".

Committee's consideration of the meaning of 'corporation'

8. The application by the Mackay Regional Council represents the first time a local government entity has applied for a Citizen's Right of Reply. The committee noted that a Citizen's Right of Reply is usually reserved for private citizens.
9. The committee considered whether a Regional Council fits within the meaning of "corporation" by seeking to identify a definition of the term, and investigate whether other Australian and New Zealand jurisdictions allowed a corporation to make a submission, whether they defined the term "corporation", and whether the issue of government entities' eligibility to make a submission had been considered.
10. Under legislation, local governments are considered bodies corporate under the *Local Government Act 2009*. Under Section 11, a local government:
- a) is a body corporate with perpetual succession; and*
 - b) has a common seal; and*
 - c) may sue and be sued in its name.*
11. In Section 32D(2), the Acts Interpretation Act 1954 provides examples of express references to a corporation which include a:
- body corporate
 - company
 - corporation sole
12. In investigating other jurisdictions, the committee found that nine of the thirteen jurisdictions (excluding the Northern Territory's Legislative Assembly, Victorian Legislative Assembly, Tasmanian House of Assembly and the Commonwealth Parliament's House of Representatives) allow corporations to make a Citizen's Right of Reply.
13. However, none of these jurisdictions define "corporation" in their standing or sessional orders, and most have not had to address the issue of whether a government entity is eligible to make a submission.
14. The Western Australian Legislative Assembly and Victorian Legislative Council were the only jurisdictions to have allowed a local government a right of reply, while the NSW Legislative Council have allowed local councillors a right of reply.
15. The issue of whether Executive Government entities should be eligible to a Right of Reply has not been considered and determined in any of the other jurisdictions. However, in New Zealand there is a general approach of applying a higher threshold for applications from organisations than would apply to applications from individuals. In the case of government agencies,

especially the core public service, the threshold would be higher still, as there is an expectation that these agencies are subject to robust questioning and accountability as part of the House's normal scrutiny function.

16. The committee found that a Regional Council fits within the meaning of corporation under Standing Order 279 in accordance with definitions provided by the *Local Government Act 2009* and the *Acts Interpretation Act 1954*, and that Mackay Regional Council was therefore eligible to seek a Citizen's Right of Reply.

Committee's Inquiry

17. Upon determining that a regional council fits within the meaning of corporation, the committee met in private session to consider the submission from the Council and how to proceed with the matter, noting—
 - the Standing Orders; and
 - the practice and established procedures of Ethics Committees in respect of similar submissions in the past.
18. The committee corresponded with the Council and negotiated a response in the context of the Standing Orders. On 28 October 2015, Cr Deirdre Cornerford accepted the proposed response.
19. In accordance with Standing Order 282(5), the committee did not consider or judge the truth of any statements made in the House by the Member for Ferny Grove or the Member for Murrumba, or the truth of the statements made by Mackay Regional Council in response.
20. The committee resolved to recommend to the Legislative Assembly that the agreed response be incorporated into the Record of Proceedings.

Recommendation:

The committee recommends that the response in the terms set out in this report, be incorporated in the Record of Proceedings.



Mr Mark Ryan MP
Chair

November 2015

Membership — 55th Parliament

Mr Mark Ryan MP, Chair
Member for Morayfield

Mr Glen Elmes MP, Deputy Chair
Member for Noosa

Ms Nikki Boyd MP
Member for Pine Rivers

Mr Jim Madden MP
Member for Ipswich West

Mr Matt McEachan MP
Member for Redlands

Dr Mark Robinson MP
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RESPONSE BY MACKAY REGIONAL COUNCIL, TO EVIDENCE GIVEN AT A PUBLIC HEARING HELD BY THE FINANCE AND ADMINISTRATION COMMITTEE ON 25 MAY 2015 AND STATEMENTS MADE BY THE MEMBERS FOR FERNY GROVE AND MURRUMBA ON 4 JUNE 2015

On 25 May 2015, Ms Kate MacDonald made the following statement to the Finance and Administration Committee:

The Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Bill 2013 saw myself and my colleagues lose many valuable conditions from the industrial award I work under—specifically, the loss of locality allowance, fifth week annual leave provisions, job security and major change notification. As mentioned in my written submission, I am a single mother. I struggle each day to assure my children that everything will be okay when I am unsure myself. Losing \$18.65 in locality allowance to drop almost \$1,000 a year has a significant impact on our family when for years it has been a guaranteed feature of my income.¹

On 4 June 2015, the Member for Ferny Grove made the following statement:

Further real-life experiences of the effect of those insidious LNP laws were provided through evidence from Ms MacDonald, a local government worker at the Mackay Regional Council. Ms MacDonald explained how she and her work colleagues lost many valuable conditions from the industrial award they work under—specifically, the locality allowance, fifth week annual leave provisions, job security and major change notification. She explained that as a single mother she struggles each day to assure her children that everything will be okay when she is unsure herself. Losing \$18.65 in the locality allowance, meaning a drop of almost \$1,000 a year, has had a significant impact on her family.

We heard tonight members opposite in this chamber talking about freedom of choice. What freedom of choice did Ms MacDonald have in respect of losing her locality allowance?

Also on 4 June 2015, the Member for Murrumba made the following statement:

Let me give the House an example of what local government workers at Mackay Regional Council were facing if their agreement proceeded under the Campbell Newman laws. In recent enterprise bargaining negotiations, the Mackay Regional Council set up a corporation called Northern Australia Services. There is some secrecy surrounding Northern Australia Services, but this is what I have been informed. Northern Australia Services is 50 per cent owned by Mackay Enterprises, a council company owned 100 per cent by council. Reportedly, the other 50 per cent is owned by Partnership Australia which is 50 per cent owned by the LGAQ. Yes, the LGAQ would form a company that would benefit from the Campbell Newman laws.

The crucial thing for workers is what the council wants to do with Northern Australia Services. Northern Australia Services will perform council services and ostensibly look for contracts across Northern Australia. Services at Mackay Regional Council that would go across to NAS would include IT, client services, rates, accounts, procurement, debt collection, administration support, payroll, HR and software systems. Reportedly, 650 workers from council would go across to this new company out of a workforce of 1,400 people. Now this company—part owned by the LGAQ—is a game changer for local government workers across northern and

¹ Queensland Legislative Assembly, Record of Proceedings (Hansard), 25 November 2014, p. 3920.

western Queenslander. It is a potential threat to the workforce of all the local councils in those areas. It wants their outsourced business. No wonder the LGAQ opposes these new laws that prevent this contracting out. We could say goodbye to our white-collar workforce in council if this kind of set-up was introduced by councils.

The member for Maroochydore said earlier that the local council complained that the entry level for council workers is 20 to 30 per cent above the private sector. She also said that the council complained that they cannot contract out to the private sector. The real complaint is that wage levels are too high for local government workers. That is the real complaint. The crux of it is that they do not want to pay more for local government workers than what they are paying them now; they want to pay them less.

The council workers in Mackay—the ones not in Northern Australia Services—are facing this if the restoring fairness bill does not get up. Under the proposed agreement, they would lose an extra week of leave and their locality allowance. No-one would be disadvantaged with regard to their base pay, but they would lose their allowance in favour of a new reduced allowance. Under this proposed agreement under the LNP laws, existing conditions would be preserved in a separate document. These are the non-allowable matters that we have heard about tonight. These are the crucial working conditions that would not be in their new award. What is more, a worker can only enforce the conditions in this document through a civil action, not through the commission. They have to say to their employer, 'I'm going to take you to court because you're not giving me these conditions.'

The Mackay Regional Council (the Council) refutes the assertion that Council employees have suffered a loss of, or change to, their conditions. The Council contends that at no time did any employee of the Council have any change in conditions as a result of the changes to legislation or the Award. Council has its Certified Agreement, and at all times continued to employ staff under the terms of this agreement.

The Mackay Regional Council also refutes the claims on secrecy surrounding Northern Services Australia. Council has briefed all staff on a number of occasions and questions may be asked by staff on the Council's intranet. The pending arrangement was also announced at the 2014 LGAQ State Conference.

The Mackay Regional Council also refutes the number of staff employed by the Council and the number of staff moved to Northern Australian Services. The Council workforce is circa 1,100 and the number of staff in the Northern Australia Services program is 141.

The Mackay Regional Council refutes the assertion that Northern Services Australia will be a threat to all local councils. The Council contends that Northern Australia services will ensure the Council's operations remain cost effective and efficient, which will in turn relieve ratepayers of 10-12 per cent rate increases of the past.

The Mackay Regional Council asserts that it has not contracted out its services, rather its employees have a new reporting arrangement. The Council also asserts that the application of conditions to employees of Council are based on the Award and also the terms of any Certified Agreement. Whilst the Award conditions may change, it is inaccurate to assume that the same would translate to the ultimate agreed terms of the Certified Agreement.

Legislative Assembly of Queensland**STANDING RULES AND ORDERS OF THE LEGISLATIVE ASSEMBLY: EFFECTIVE FROM 31 AUGUST 2004****EXTRACT: CHAPTER 46: CITIZEN'S RIGHT OF REPLY****279. Reference to a person includes a corporation**

- (1) In this chapter a reference to a person includes a corporation.
- (2) A corporation making a submission under this chapter is required to make it under their common seal (if it has a common seal).

280. Affected person may make a submission

- (1) A person who has been referred to in the Legislative Assembly or a committee by name, or in such a way as to be readily identified may make a submission to the Speaker:
 - (a) claiming that the person has been adversely affected in reputation or in respect of dealings or associations with others, or injured in occupation, trade, office or financial credit, or that the person's privacy has been unreasonably invaded, by reason of that reference to the person or corporation; and
 - (b) requesting that the person be able to incorporate an appropriate response in Hansard or the relevant committee report.
- (2) The Speaker may refer the submission to the ethics committee if the Speaker is satisfied:
 - (a) 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 ethics committee; and
 - (b) that it is practicable for the ethics committee to consider the submission under this chapter.
- (3) A person shall ensure a submission is received by the Speaker within the term of the Parliament in which the person has been adversely referred.

281. Submissions

- (1) A submission under this chapter shall be succinct and strictly relevant to the questions in issue and shall not contain anything offensive in character.
- (2) A submission under this chapter shall not contain any matter the publication of which would have the effect of:
 - (a) unreasonably adversely affecting or injuring a person or corporation, or unreasonably invading a person's privacy, in the manner referred to in SO 280(1); or
 - (b) unreasonably adding to or aggravating any such adverse effect, injury or invasion of privacy suffered by a person.

282. Action by the ethics committee

- (1) The ethics committee may decide not to consider a submission referred to it under this chapter 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 House.

- (2) If the ethics committee decides to consider a submission under this chapter, the ethics committee may confer with the person who made the submission and any member who referred in the House to that person or corporation or where the submission relates to another committee's proceeding, the relevant committee.
- (3) In considering the submission under this chapter, the ethics committee shall deliberate in a private meeting.
- (4) The ethics committee shall not publish a submission referred to it under this chapter 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 House.
- (5) In considering a submission under this chapter and reporting to the House the ethics committee shall not consider or judge the truth of any statements made in the House or the submission.
- (6) If a person making a submission does not respond to a communication from the committee within three months, the committee may consider the matter to be closed.
- (7) Public servants seeking a right of reply must do so as private citizens.
- (8) Persons making their submission through a representative must personally sign the response.

283. Recommendation and report by the ethics committee

in its report to the House on a submission under this chapter, the ethics committee may make either of the following recommendations and no other recommendations:

- (a) that no further action be taken by the ethics committee or the House 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 or corporation and the ethics committee, be incorporated in Hansard.