



## **ETHICS COMMITTEE**

### **Report No. 116**

#### **Report on a Right of Reply No. 21**

##### ***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 and the procedure for the Ethics committee to follow when considering submissions. 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.
4. 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 Hansard.

### ***Person Referred to in the Parliamentary Proceedings: Mr Gary Fenlon***

5. On 25 November 2010, the then Minister for Public Works and Information and Communication Technology, Mr Swarten, made a ministerial statement in relation to Mr McKennariey and his business dealings with two companies, GBG and BHF. In the ministerial statement, Mr Swarten referred to Mr Fenlon and his involvement in the company, GBG. Mr Fenlon states that his reputation has been adversely affected by this statement and seeks to have an appropriate response incorporated in the parliamentary record.
6. After satisfying himself that the matter was not frivolous, vexatious or offensive in character, and that it was practicable for the Integrity, Ethics and Parliamentary Privileges Committee to consider the matter, on 16 December 2010, the Speaker referred the matter to the Integrity Ethics and Parliamentary Privileges Committee for its consideration, in accordance with Standing Order 280.

### ***The Committee's Inquiry***

7. The Integrity, Ethics and Parliamentary Privileges Committee met in private session to consider the submission from Mr Fenlon and how to proceed with the matter, noting—
  - the standing orders of the Queensland Legislative Assembly; and
  - the practice and established procedures of the Integrity, Ethics and Parliamentary Privileges Committee in respect of similar submissions in the past.
8. The committee wrote to Mr Fenlon on 16 February 2011 with a response in the context of the standing orders.
9. The committee noted Standing Order 282 (6) which provides:

#### **282 Action by the ethics committee**

...

(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.

...

10. The Integrity, Ethics and Parliamentary Privileges Committee noted that if Mr Fenlon did not respond to the correspondence from the committee within three (3) months (16 May 2011) it could consider the matter to be closed and proceed to report.
11. The Integrity, Ethics and Parliamentary Privileges Committee was poised to report on this matter when it was dissolved on 13 June 2011.
12. On 16 June 2011, the Ethics Committee resolved to continue with the inquiry.
13. The committee agreed to publish the response contained in this report.
14. The standing orders do not allow the committee to consider or judge the truth of any statements made in the House or the submission. Therefore, the committee has not considered the truth of the statements made by the Member for Rockhampton in the House or the truth of the statements made by Mr Fenlon in his response but has instead focussed on facilitating the right of reply process.

### ***Subsequent statement by the Minister***

15. The committee notes that the then Minister, Mr Swarten, made the following statement in the House on 17 February 2011—

**Hon. RE SCHWARTEN** (Rockhampton—ALP) (Minister for Public Works and Information and Communication Technology)

...

*I also want to correct the record in relation to a matter that I raised in this parliament late last year—I think on the last sitting day. It was concerning a firm called GBG. In that speech I made a statement which I have now found to be incorrect. That was that a former member of this House, Gary Fenlon, was in fact a director of that company. He has since advised that he is a shareholder of that company. So I want to correct the record according.*

...

16. The committee noted that despite Mr Swarten's ministerial statement to the House, standing order 282 (1) provides that the committee must still report its decision to the House.
17. The committee further noted that Mr Swarten's statement addressed only one of Mr Fenlon's concerns.

#### **Recommendation:**

**The committee recommends that the response in the terms set out in this report, be incorporated in Hansard.**

**Evan Moorhead MP**

Chair

June 2011

### **Membership — 53rd Parliament**

Mr Evan Moorhead MP, Chair  
*Member for Waterford*

Dr Alex Douglas MP, Deputy Chair  
*Member for Gaven*

Ms Grace Grace MP  
*Member for Brisbane Central*

Mr Andrew Powell MP  
*Member for Glass House*

Ms Mark Ryan MP  
*Member for Morayfield*

Mr Peter Wellington MP  
*Member for Nicklin*

### **Secretariat**

Mr Michael Ries, *Research Director*

Ms Kym Christensen, *Acting Principal Research Officer*

Ms Andrea Musch, *Executive Secretary*

### **Contact**

Telephone: 07 3406 7586

Facsimile: 07 3406 7691

E-mail: [ieppc@parliament.qld.gov.au](mailto:ieppc@parliament.qld.gov.au)

Internet: <http://www.parliament.qld.gov.au/view/committees/MEPPC.asp>

**RESPONSE BY MR GARY FENLON TO A STATEMENT MADE BY THE MEMBER FOR ROCKHAMPTON  
(FORMER MINISTER FOR PUBLIC WORKS AND INFORMATION AND COMMUNICATION TECHNOLOGY,  
MR SCHWARTEN) ON 25 NOVEMBER 2010**

The then Minister for Public Works and Information and Communication Technology, Mr Schwarten, said on 25 November 2010 in the Queensland Parliament:

1. *...The two other directors of GBG, Gary Fenlon and Graham Doyle, have since quit the company...; and*
  
2. *...Former National Party ministers, current local government councillors, Order of Australia recipients and, of course, the former Labor member for Greenslopes, Gary Fenlon, whose initial was one of the G's in GBG, all should be contacting ASIC.*

In relation to 1, publicly available records show that I have never been a director of that company.

In relation to 2, publicly available records show that I have not been a shareholder of that company for more than six years.

## 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.