



ETHICS COMMITTEE

Report No. 174

Report on a Right of Reply No. 31

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 CEO of Fraser Coast Regional Council (the Council), Mr Ken Diehm, wrote on behalf of the Council to Speaker Wellington on 28 June 2017 seeking a citizen's right of reply to the tabling of a report titled 'Fraser Coast Regional Council Organisational Review and Development Plan January 2017' (the report) by Mr Rob Pyne MP, Member for Cairns (the Member for Cairns) on 24 May 2017.

7. On 10 July 2017, Speaker Wellington referred the Council's request for a citizen's right of reply, on behalf of the Council, to the committee for consideration.

Committee's consideration of the meaning of 'corporation'

8. In the Ethics Committee's Report No. 158 (Report on a Right of Reply No. 28), 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*.
9. In keeping with this precedent, the committee considered that the Fraser Coast Regional Council fits within the meaning of corporation under Standing Order 279, and is therefore eligible to make a submission for a citizen's right of reply.

Committee's Inquiry

10. 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.
11. The committee corresponded with the Council and negotiated a response in the context of the Standing Orders. On 5 September 2017, Mr Diehm responded by agreeing to the proposed response.
12. In accordance with Standing Order 282(5), the committee did not consider or judge the truth of any statements made in the documents tabled by the Member for Cairns, or the truth of the statements made by the Council in response.
13. The committee resolved to recommend to the Legislative Assembly that the agreed response be incorporated into the *Record of Proceedings*.

Recommendation 1:

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



Mr Don Brown MP
Chair

September 2017

Membership — 55th Parliament

Mr Don Brown MP, Chair
Member for Capalaba

Mr Jeff Seeney MP, Deputy Chair
Member for Callide

Mr Craig Crawford MP
Member for Barron River

Mr Linus Power MP
Member for Logan

Ms Fiona Simpson MP
Member for Maroochydore

Mr Trevor Watts MP
Member for Toowoomba North

Secretariat

Mr Michael Ries, *Committee Secretary*

Ms Melissa Salisbury, *Assistant Committee Secretary*

Ms Andrea Musch, *Executive Secretary*

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RESPONSE BY FRASER COAST REGIONAL COUNCIL, TO A DOCUMENT TABLED BY THE MEMBER FOR CAIRNS, MR ROB PYNE MP, ON 24 MAY 2017

On 24 May 2017, the Member for Cairns, Mr Rob Pyne MP, tabled a document titled 'Fraser Coast Regional Council Organisational Review and Development Plan January 2017'.

The report lists many references to the performance and conduct of Council's former Chief Executive Officer and other management staff and makes comment about the conduct of the elected members of Council. The report is therefore highly sensitive and controversial and was being treated by Council with utmost confidentiality until measures had been enacted to redact those sections of the report which could lead to litigation before its public release.

Council's reputation has been damaged by the tabling of this document. Council has since been formally served a Concerns Notice under Section 14(2) of the *Defamation Act 2005* and a number of complaints under the *Information Privacy Act 2009*, all of which directly reference the tabled document.

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.

EXTRACT OF MINUTES

FRASER COAST REGIONAL COUNCIL REQUEST
FOR A CITIZEN'S RIGHT OF REPLY



Objective ID: A204667

Ethics Committee

Meeting No. 16

Thursday, 10 August 2017, 1:00 PM

Committee Room 1, Parliamentary Annexe

Present Mr Don Brown MP
Mr Craig Crawford MP
Mr Linus Power MP
Mr Jeff Seeney MP
Ms Fiona Simpson MP (arrived 1:03 PM)
Mr Trevor Watts MP (arrived 1.05 PM)

Apologies Nil

In attendance Mr Michael Ries, Committee Secretary
Ms Melissa Salisbury, Assistant Committee Secretary

1. Welcome and apologies

The meeting commenced at 1:00 PM, there were no apologies.

2. Citizen's Right of Replies

2.1 Briefing Paper No. 76

Resolved

That the committee:

- a) agree that the Fraser Coast Regional Council fits within the meaning of corporation under Standing Order 279 in accordance with the committee's finding in Report No. 158 (Report on a Right of Reply No. 28);
- b) consider the submission from Fraser Coast Regional Council in relation to Standing Order 280, citizen's right of reply; and
- c) endorse the Chair send the attached letter to the Council setting out the criteria for a citizen's right of reply and providing a draft response for incorporation into the Record of Proceedings (Attachment E).

Moved: Mr Seeney

Seconded: Mr Power

Close The meeting closed at 1:17PM

Certified correct on the 24th day of August 2017



Don Brown MP

Chair

MINUTES



Objective ID: A204727

Ethics Committee

Meeting No. 18B

Thursday, 7 September 2017, 1:24PM

Committee Room 1, Parliamentary Annexe

Present

Mr Don Brown MP
Mr Craig Crawford MP
Mr Linus Power MP
Mr Jeff Seeney MP
Ms Fiona Simpson MP
Mr Trevor Watts MP

Apologies Nil

In attendance Mr Michael Ries, Committee Secretary
Ms Melissa Salisbury, Assistant Committee Secretary

1. Welcome and apologies

The meeting commenced at 1:24pm. There were no apologies.

2. Citizen's Right of Reply – Fraser Coast Regional Council

2.1 Briefing Paper No. 81

Resolved

That the committee adopt draft Report No. 174: Report on a Right of Reply No. 31.

Moved: Mr Power Seconded: Ms Simpson

Resolved

That the submission from the Fraser Coast Regional Council remain confidential in accordance with Standing Order 282(4), and therefore not be published with the report.

Moved: Mr Crawford Seconded: Mr Seeney

Resolved

That the committee endorse the Chair table the report on Thursday 7 September 2017 (NB if tabled on that date, in accordance with Sessional Order 2B it will need to be considered by the House on the next sitting day, 10 October 2017).

Moved: Mr Power Seconded: Ms Simpson

Close The meeting closed at 1:30pm

Certified correct on the 7th day of September 2017

Don Brown MP

Chair