



ETHICS COMMITTEE

Report No. 191

Report on a Right of Reply No. 38

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. Mr John Murphy wrote to the Speaker on 14 November 2018 to seek a citizen's right of reply to statements made in the House by the Members for Burleigh and Kawana and the Minister for Housing and Public Works on 30 October and 1 November 2018.
7. On 21 November 2018, the Speaker referred Mr Murphy's request for a citizen's right of reply to the committee for consideration.
8. Mr Murphy wrote again to the Speaker on 26 November 2018, seeking an additional citizen's right of reply to a further statement made in the House by the Member for Burleigh on 15 November 2018.
9. On 11 December 2018, the Speaker referred Mr Murphy's additional request for a citizen's right of reply to the committee for consideration.

10. Mr Murphy wrote again to the Speaker on 6 March 2019, seeking a further citizen's of reply to statements made in the House by the Minister for Housing and Public Works, the Member for Burleigh, the Premier, the Member for Burdekin and the Member for Maroochydore on 12, 13, 14 and 27 February 2019.
11. On 21 March 2019, the Speaker referred Mr Murphy's further request for a citizen's right of reply to the committee for consideration.
12. As all of Mr Murphy's requests related to the same subject matter, on receipt of each request the committee determined it would deal with it together with the previous request/s.

Committee's Inquiry

13. The Ethics Committee of the 56th Parliament met in private session to consider the submissions from Mr Murphy 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.
14. The committee corresponded with Mr Murphy and negotiated a response in the context of the Standing Orders. On 6 September 2019, Mr Murphy responded by agreeing to the proposed response.
15. In accordance with Standing Order 282(5), the Ethics Committee of the 56th Parliament did not consider or judge the truth of any statements made in the words of the Members for Burleigh, Kawana, Burdekin and Maroochydore, the Minister for Housing and Public Works and the Premier, or the truth of the statements made by Mr Murphy in response.
16. The Ethics Committee of the 56th Parliament 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.



Joe Kelly MP
Chair

October 2019

Membership — 56th Parliament

Mr Joe Kelly MP, Chair
Member for Greenslopes

Mr Tim Nicholls MP, Deputy Chair
Member for Clayfield

Ms Nikki Boyd MP¹
Member for Pine Rivers

Mr John-Paul Langbroek MP²
Member for Surfers Paradise

Mr Mark McArdle MP
Member for Caloundra

Mrs Melissa McMahon MP³
Member for Macalister

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¹ The Member for Macalister, Mrs Melissa McMahon MP, was appointed to the committee under Standing Order 202 as a substitute member of the committee for Ms Nikki Boyd MP from 25 March 2019 to 6 September 2019.

² The Member for Surfers Paradise, Mr John-Paul Langbroek MP was appointed to the committee under Standing Order 202 as a substitute member of the committee for Mr Ray Stevens MP for the meeting on 19 September 2019.

³ The Member for Macalister, Mrs Melissa McMahon MP, was appointed to the committee under Standing Order 202 as a substitute member of the committee for Ms Leanne Linard MP for the meeting on 19 September 2019.

RESPONSE BY MR JOHN MURPHY, TO STATEMENTS MADE BY THE MEMBER FOR BURLEIGH, MR MICHAEL HART MP, THE MEMBER FOR KAWANA, MR JARROD BLEIJE MP, AND THE MINISTER FOR HOUSING AND PUBLIC WORKS, HON MICK DE BRENNI MP, ON 30 OCTOBER, 1 NOVEMBER AND 15 NOVEMBER 2018;

AND TO STATEMENTS MADE BY THE MINISTER FOR HOUSING AND PUBLIC WORKS, HON MICK DE BRENNI MP, MEMBER FOR BURLEIGH, MR MICHAEL HART MP, THE PREMIER, HON ANNASTACIA PALASZCZUK, THE MEMBER FOR BURDEKIN, MR DALE LAST MP AND THE MEMBER FOR MAROOCHYDORE, MS FIONA SIMPSON MP, BETWEEN 12 FEBRUARY 2019 AND 27 FEBRUARY 2019

Between 30 October 2018 and 27 February 2019 various statements were made in the Legislative Assembly by the Member for Burleigh, the Member for Kawana, the Minister for Housing and Public Works, the Premier, the Member for Burdekin and the Member for Maroochydore, that adversely affected my reputation.

I was the General Manager of JM Kelly Builders Pty Ltd (JMK) and JM Kelly (Project Builders) Pty Ltd (JMK PB) as of 20 June 2016 and Director of JM Kelly Builders Pty Ltd from 27 June 2016.

In my position as Director, JMK was not given multiple Queensland government contracts after JMK PB was placed into liquidation in June 2016. As Director, JMK were also not provided with any financial assurances by the Queensland government and even until the exclusion of JMK from any tender opportunities by Building and Asset Services (BAS) arising out of a QCAT matter I have personal knowledge that JMK received little work from the Queensland government.

As Director, I did not demonstrate economic incompetence.

In my time as Director, JMK did not fail any minimum financial requirement requests issued by QBCC.

In June 2016 as Director I resolved that JMK would accept novation from JMK PB of three contracts JMK PB was undertaking prior to being placed into voluntary liquidation, one of which was the Emu Park State School contract. Contract Assumption Deeds and consequently Deeds of Novation transferring these contracts was the most suitable commercial transactions for all creditors, all of whom received their legitimate entitlements from JMK. In my time as Director there was no 'phoenix' arrangement between these entities and there was therefore no approval from the Palaszczuk government and any allegations as such is baseless.

The allegation that there was 'phoenixing' in June 2016, from JMK PB to JMK is untrue. As Director, I resolved that JMK would accept all employee entitlements, partly completed contracts (3 contracts), subcontract payment obligations and all suppliers' costs plus defect management on contracts that had been completed by JMK PB as at 20 June 2016.

I reject all allegations and imputations that I have in any way acted improperly, incompetently or fraudulently in regard to the operations of JM Kelly Project Builders Pty Ltd and JM Kelly Builders Pty Ltd.

Never at any time have I made any financial donation to the Labor party.

I am not a lifelong friend with the former Labor government Minister Mr Robert Schwarten. I know Mr Schwarten but to state that we are lifelong friends is untrue.

I reject any allegations or imputations that I made any payments, or contributed to any gifts, functions or donations, to Mr Schwarten. Further, I reject any allegation or imputation that I engaged in inappropriate or illegal dealings with Mr Schwarten.

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.