

Report concerning an
application from
Mr Brian McCarty for the
publication of a response to a
reference made in the House
of Representatives

House of Representatives
Committee of Privileges and Members' Interests



Membership of the Committee

Chair Hon Nicola Roxon MP

Deputy Chair Mr Patrick Secker MP

Members Mr Chris Hayes MP (nominee of the Leader of the House)

Mr Geoff Lyons MP

Hon Robert McClelland MP

Mr Don Randall MP

Hon Philip Ruddock MP

Ms Laura Smyth MP

Hon Alex Somlyay MP (nominee of the Deputy Leader of the Opposition)

Mr Mike Symon MP

Mr Tony Windsor MP

Committee Secretariat

Secretary Mr David Elder

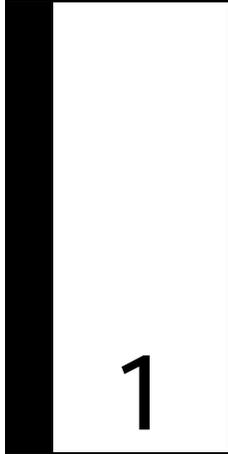
Research Officer Ms Claressa Surtees

Administrative Officer Ms Laura Gillies

Ms Lynnette Eager

- 1.1 Mr Brian McCarty has made a further application, under the procedure adopted by the House on 27 August 1997, for the publication of a response to references made about him in the House by Hon Warren Entsch MP on 14 February 2013. The Committee had agreed to a right of reply for Mr McCarty to earlier remarks made about him by Mr Entsch. Following the presentation of the right of reply, Mr Entsch made further comments relating to Mr McCarty, and it is to those comments that Mr McCarty is seeking to respond.
- 1.2 In considering the submission from Mr Brian McCarty, the Committee has had regard to the terms of the House's resolution (copy of resolution at Appendix 1) and the guidelines which the Committee has developed under paragraph 9 of the resolution (copy of guidelines at Appendix 2).
- 1.3 Neither the right of reply procedure adopted by the House nor the guidelines agreed to by the Committee make any specific provision for further rights of reply to be agreed. The Committee has agreed as a matter of principle that it will not permit further rights of reply, thus preventing what might become a continual tit for tat series of responses.
- 1.4 The Committee recommends that no further action be taken by the House or the Committee on the submission.

HON NICOLA ROXON MP
Chair
June 2013



Appendix 1

Right of Reply of persons referred to in the House

Resolution adopted 27 August 1997

That:

(1) Where a person who has been referred to by name, or in such a way as to be readily identified, in the House, makes a submission in writing 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; and

(b) requesting that the person be able to incorporate an appropriate response in the parliamentary record;

and if the Speaker is satisfied:

(c) 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 Committee of Privileges; and

(d) that it is practicable for the Committee of Privileges to consider the submission under this resolution,

the Speaker shall refer the submission to that Committee.

(2) The Committee may decide not to consider a submission referred to it under this resolution 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.

(3) If the Committee decides to consider a submission under this resolution, the Committee may confer with the person who made the submission and any Member who referred in the House to that person.

(4) In considering a submission under this resolution, the Committee shall meet in private session.

(5) The Committee shall not publish a submission referred to it under this resolution 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.

(6) In considering a submission under this resolution and reporting to the House the Committee shall not consider or judge the truth of any statements made in the House or of the submission.

(7) In its report to the House on a submission under this resolution, the Committee may make either of the following recommendations:

(a) that no further action be taken by the House or by the Committee 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 and the Committee, be published by the House or incorporated in *Hansard*,

and shall not make any other recommendations.

(8) A document presented to the House under paragraph (5) or (7):

(a) in the case of a response by a person who made a submission, shall be succinct and strictly relevant to the questions in issue and shall not contain anything offensive in character; and

(b) shall not contain any matter the publication of which would have the effect of:

(i) unreasonably adversely affecting or injuring a person, or unreasonably invading a person's privacy, in the manner referred to in paragraph (1); or

(ii) unreasonably adding to or aggravating any such adverse effect, injury or invasion of privacy suffered by a person.

(9) The Committee may agree to guidelines and procedures, not inconsistent with this resolution, to apply to the consideration by it of submissions.

(10) This resolution shall continue in force unless and until amended or rescinded by the House in this or a subsequent Parliament.

Appendix 2

Protection of persons referred to in the House

Guidelines made under clause 9 of the resolution of the House of 27 August 1997 Supplementary to the provisions of the resolution of the 27 August 1997

The Committee of Privileges will consider each application for the publication of a response on its merits, but proposes that the following guidelines apply to the procedure:

- (1) an application must be received within 3 months of the making of the statement to which the person wishes to respond unless, because of exceptional circumstances, the committee agrees to consider an application received later;
- (2) applications should only be considered from natural persons, they should not be considered if lodged by or on behalf of corporations, businesses, firms, organisations or institutions;
- (3) applications should only be considered from persons who are Australian citizens or residents;
- (4) an application must demonstrate that a person who is named, or readily identified, has been subject to clear, direct and personal attack or criticism, and has been damaged as a result;

- (5) applications must be concise, be in the character of a refutation or explanation only and must be confined to showing the statement complained of and the person's response and must not contain any offensive material;
- (6) applications concerning statements made in the Main Committee may be considered;
- (7) applications should not be considered from persons who wish to respond to a statement or remarks made in connection with the proceedings of a standing or select committee – such persons should contact the committee direct on the matter; and
- (8) in considering applications, the committee will have regard to the existence of other remedies that may be available to a person referred to in the House and whether they have been exercised.

