



Procedure and Privileges Committee

Report on a Person Adversely Referred to in the Legislative Assembly — Mr Danne Forte

Report No. 7

September 2014

Legislative Assembly

Parliament of Western Australia

Committee Members

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**Published by the Legislative Assembly, Parliament of Western Australia, Perth.
September 2014.**

ISBN: 978-1-92511-622-9

(Series: Western Australia. Parliament. Legislative Assembly. Committees.
Procedure and Privileges Committee. Report 7)

328.365

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Presented by

**Ms Wendy Duncan, MLA
Deputy Speaker of the Legislative Assembly**

Laid on the Table of the Legislative Assembly on 11 September 2014

Report

The Speaker of the Legislative Assembly referred to the Procedure and Privileges Committee a letter from Mr Danne Forte, Managing Director of Nicheliving Construction, seeking to use Standing Order 114 to respond to comments made on 13 May 2014 by the Member for Armadale, Mr Tony Buti, MLA.

The Committee has agreed to recommend the incorporation in *Hansard* of the appended response by Mr Danne Forte.

In accordance with Standing Order 114, the Committee has not considered or judged the truth of any statements made in the Legislative Assembly or in the submission.

Recommendation

Your Committee recommends –

That a response by Mr Danne Forte, in the terms specified in the Appendix to this report, be incorporated in *Hansard*.

A handwritten signature in blue ink that reads "Michael Sutherland". The signature is written in a cursive, flowing style.

Hon Michael Sutherland, MLA
Chairman of the Committee
11 September 2014

Appendix One

Response by Mr Danne Forte

Agreed to by Mr Danne Forte and the Procedure and Privileges
Committee pursuant to Standing Order 114

Request pursuant to Standing Order 114.

On 13 May 2014 Mr Tony Buti MLA made a number of comments about me to which I wish to respond.

Background: Between 2012 and 2014, Nicheliving built 120 houses in Newman. Over 130 employees and contractors worked on site. Approximately 40% were non-permanent residents and these included 13 tradesmen from the Philippines who held 457 visas. 3 of the Filipino workers, A, B and C, commenced work on site in the second half of 2013. As the project neared completion B and C were made redundant. A was re-deployed at our Malaga factory. Each of Mr Buti's comments is addressed in turn.

"A number of foreign workers, most of them from the Philippines, have been working a 60-hour week, with only Sunday being a day of rest"

We adopt standard terms of employment for our employees. Those terms do not vary on the basis of residency status. The standard contracts contained terms that:

- (a) ordinary hours of work would be 38 hours per week and could be worked on any day of the week Monday to Saturday inclusive, between the hours of 6.00am and 6.00pm as required by Nicheliving;
- (b) the employee could be required to work reasonable overtime outside of his or her ordinary hours of work;
- (c) all time worked outside ordinary hours of work would be deemed overtime and would be paid for at the base rate of pay.

We did not compel our employees to work more than 38 hours per week. If there was a need for increased labour on a particular day, employees were requested to work overtime and were paid for the extra hours worked.

"They work for 11 months before they received a holiday"

This assertion is incorrect. Our company policy was and is that leave entitlements accrue on a pro rata basis according to the number of days worked. Any leave which has accrued as at the date an employee wishes to take leave may be taken by that employee.

"They were being paid from \$10 to \$20 less an hour than what they should have been paid"

All our employees were paid as per the base rate of pay set out in their respective employment contracts. That rate was always determined according to the award rates maintained by the Fair Work Commission. At the time the Filipino workers commenced at Nicheliving in January 2013, the minimum rate stipulated by the Federal Government was \$49,333. Depending on the trade in which these employees were employed, they were offered salaries ranging between \$53,000 and \$56,000 *exclusive* of superannuation.

"They were also being charged \$100 a week for donga accommodation. They were not given accommodation; they had to pay \$100 net, so it is about \$130 before tax. At one stage they had to share accommodation; I believe they now have single quarters"

We hired dongas which cost \$2,100 per month. Employees on an annual salary contract are provided with donga accommodation free of charge. If any other employee wanted to stay in a Nicheliving donga, they were charged a reduced rate of \$200 per week. Our employees were not compelled to stay in the dongas or live on the camp. They were free to take alternative accommodation. There was no shortage of accommodation in

Newman. The donga accommodation was of a very high quality. I visited the site at Kurra regularly and I stayed in a donga. Some workers asked me whether they could share a donga and split the cost. I agreed and arranged for bunk beds to be installed.

“I believe that three of these workers went to see Mr Forte on one particular morning about payment for working after 38 hours. He said that he would have an answer for them in the afternoon. At 3.00 pm, he said that they had been sacked and they had one hour to remove themselves from Nicheliving property. They had to drive back to Perth, a 12 or 13- hour drive, because they had nowhere to live in Newman”

From the nature of these comments it appears that that the three employees to which Mr Buti was referring were A, B and C. The events described by Mr Buti are completely inaccurate.

In April 2014 A, B and C all came to see me one morning at our offices in Northbridge, not on site in Newman. I was surprised to see A with B and C as he had been seconded to work at our factory in Malaga. I asked him to return to work at the factory. He did so. B and C had driven from Newman after they had been given notice by site management in Newman that they had been made redundant as the project was coming to an end. B and C wanted to discuss further employment with us. They did not have any complaints about overtime or anything else. I did not say that I would have ‘an answer for them in the afternoon’ or anything like that. I told them that sadly we could not offer them further work. Several weeks later B and C, together with the immigration agent who had introduced them to us, came to see our chief accountant and assistant Managing Director. I was overseas at the time. It was established B and C had been underpaid due to confusion on the part of a junior accountant as to the terms of their employment. They were paid what was due to them on the spot. This was the first and only occasion on which any concern about underpayment was raised.

Summary: The allegations made in Mr Buti’s comments are untrue and I am greatly aggrieved by comments to the effect that I am responsible for the exploitation of people in the workforce in Western Australia. These employees earned over \$80,000 per year. Under my management the company paid over \$330,000 in overtime pay to its 457 visa employees during the Kurra project.

I strive to make the living conditions of our non-resident workers as comfortable as I can. There are many workers who will attest to both my efforts and the quality of employment and accommodation we provide.

Nicheliving is one of the very few companies which offers sponsorship and ongoing work to its non-resident employees who have worked hard and competently. Many people working for us who have been with other companies for up to four years have never had such an opportunity. At my instruction, Nicheliving arranged and paid for private tuition in English for its non-resident employees to help them obtain sponsorship in Australia. These arrangements were put in place last year and continue to this day.

Danne Forte
 Managing Director
 Projex Management and Construction Pty Ltd trading as Nicheliving Construction

Appendix Two

Committee's Functions and Powers

Legislative Assembly Standing Order No. 284 provides the following functions, powers and terms of reference to the Procedure and Privileges Committee —

Procedure and Privileges Committee

- 284.** (1) A Procedure and Privileges Committee will be appointed at the beginning of each Parliament to —
- (a) examine and report on the procedures of the Assembly; and
 - (b) examine and report on issues of privilege; and
 - (c) wherever necessary, confer with a similar committee of the Council.
- (2) Membership of the committee will consist of the Speaker and four other members as the Assembly appoints.
- (3) Standing Order 278 will apply except that where possible any report of the committee will be presented by the Deputy Speaker.
- (4) When consideration of a report from the committee is set down as an order of the day it will be considered using the consideration in detail procedure.