

41ST PARLIAMENT



Report 66

STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES

Person referred to in the Legislative Council – Submission not considered

Presented by
Hon Alanna Clohesy (Chair)

April 2022

Standing Committee on Procedure and Privileges

Members as at the time of this inquiry:

Hon Alanna Clohesy MLC (Chair)

Hon Martin Aldridge MLC (Deputy Chair)

Hon Tjorn Sibma MLC

Hon Kyle McGinn MLC

Hon Dan Caddy MLC

Staff as at the time of this inquiry:

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ISBN 978-1-925580-55-6



Standing Order 113 — Background

- 1.1 Standing Order 113 provides a process for persons or corporations that claim to have been adversely affected by comments made by a Member during parliamentary debate, to incorporate a reply in *Hansard*.
- 1.2 Prior to 2012 a 'petition for relief' procedure was applied in the Legislative Council. The procedure used at that time was similar to a committee of privilege, where the Procedure and Privileges Committee (**PPC**) (or other committee) conducted an inquiry with hearings and sought to determine whether any Member or other person had breached parliamentary privilege or committed a contempt of the House by abusing the House's freedom of speech privilege in making statements that, without the protection of Article 9 of the *Bill of Rights 1689* (UK), may be subject to legal action by an allegedly injured individual or corporation.
- 1.3 Standing Order 113 introduced a simpler, 'no fault', procedure to provide a right of reply to adversely affected individuals. It is based upon the rules of both the Senate of the Australian Parliament and the Legislative Assembly of the Western Australian Parliament.
- 1.4 Standing Order 113 states:

113. Protection of Persons and Corporations Referred to in the Council

- (1) Where a submission is made in writing to the President by a person or corporation who has been referred to in the Council by name, or in such manner as to be readily identified –
 - (a) claiming that the person or corporation 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 or corporation be able to incorporate an appropriate response in *Hansard*,and the President 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 *Procedure and Privileges Committee* ("the Committee"); and
 - (d) that it is practicable for the Committee to consider the submission under this Standing Order,the President shall refer the submission to the Committee.
- (2) The Committee may decide not to consider a submission referred to it under this Standing Order 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 Council.
- (3) If the Committee decides to consider a submission under this Standing Order, the Committee may confer with the person who made the submission and any Member who referred in the Council to that person or corporation.

- (4) In considering a submission under this Standing Order, the Committee shall meet in private session.
- (5) The Committee shall not publish a submission referred to it under this Standing Order 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 Council.
- (6) In considering a submission under this Standing Order and reporting to the Council, the Committee shall not consider or judge the truth of any statements made in the Council or the submission.
- (7) In its report to the Council on a submission under this Standing Order, the Committee may make either of the following recommendations –
 - (a) that no further action be taken by the Council 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 or corporation and the Committee, be incorporated in *Hansard*,
and shall not make any other recommendations.
- (8) A document presented to the Council under paragraph (5) or (7) –
 - (a) in the case of a response by a person or corporation 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 corporation, 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 or corporation.
- (9) A corporation making a submission under this Standing Order is required to make it under its common seal or, if the corporation does not have a common seal, a copy of the corporation's articles of incorporation must be attached to the submission.

1.5 Although Standing Order 113 replaced the petition for relief process under former Standing Order 134, the threshold test used in that petition for relief process continues to be relevant to the adverse reference process at the stage that the PPC is required to establish what qualifies as a "*sufficiently serious*" submission. In its Report 19 (April 2010), in assessing whether to accept a petition for relief, the Environment and Public Affairs Committee noted the factors to be considered:¹

Petitions should only be employed as a last resort after all other avenues for redress have been exhausted. In this instance, the Committee believes that the Petitioner could have pursued other avenues to have his point of view noted,

¹ Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, Report 19, *Petition – Prayer for Relief*, 1 April 2010, p 2.

including approaching the Member directly about his concerns or requesting that another Member of Parliament speak in the House on the Petitioner's behalf.

The purpose of SO 134 is to provide some form of redress to those who have suffered some harm as a result of what has been said during proceedings in the House or a committee, but is unable to pursue any legal recourse due to parliamentary privilege. The prayer for relief petition is not, however, a means for someone to just disagree about something said in Parliament, nor is it an opportunity to debate statements made because they disagree with them or they believe they are factually incorrect.

The freedom of speech provided to Parliamentarians by Article 9 of the *Bill of Rights 1689* is a fundamental feature of Westminster parliaments, enabling Members to debate issues, consider proposed legislation, scrutinise the government's performance and raise matters of concern on behalf of constituents, without fear or favour. Any impingement on this right would be detrimental to the operation of Parliament. As such, a right of reply is not given lightly and there must be evidence of harm to warrant such a measure. The Committee notes the comment of the Standing Committee on Procedure and Privilege in its 19th Report in this regard:

The importance of parliamentary privilege to the operation of the Parliament is such that challenges to the exercise of that right must be clearly substantiated. There could be a stifling effect on debate if members felt vulnerable and open to challenge where they offered honestly held opinions on matters of importance.²

The Submissions

- 1.6 Two comprehensive submissions were received by the President in October 2021 on behalf of the Australian Christian Lobby seeking redress under Standing Order 113 arising from comments made by Hon Sandra Carr during Members' Statements on 31 August 2021.
- 1.7 The President accepted the submissions and referred them to the PPC.
- 1.8 The PPC met and, pursuant to paragraph (2) of Standing Order 113, decided not to consider the submissions referred to it as it considered that the subject of the submissions was not sufficiently serious and did not demonstrate that there has been an adverse impact caused as a result of statements made in the House. The PPC notes the relevance of the 2010 comments of the Environment and Public Affairs Committee set out above.



Hon Alanna Clohesy MLC
Chair

² Western Australia Legislative Council, Standing Committee on Procedure and Privileges, Report 19, *Petition for Relief - Noel Crichton-Browne*, 3 December 2008, p 5.

Standing Committee on Procedure and Privileges


Date first appointed:

24 May 2001

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

'1. Procedure and Privileges Committee

- 1.1 *A Procedure and Privileges Committee is established.*
 - 1.2 The Committee consists of 5 Members, including the President and the Chair of Committees, and any Members co-opted by the Committee whether generally or in relation to a particular matter. The President is the Chair, and the Chair of Committees is the Deputy Chair, of the Committee.
 - 1.3 With any necessary modifications, Standing Order 163 applies to a co-opted Member.
 - 1.4 The Committee is to keep under review the law and custom of Parliament, the rules of procedure of the Council and its Committees, and recommend to the Council such alterations in that law, custom, or rules that, in its opinion, will assist or improve the proper and orderly transaction of the business of the Council or its Committees.'
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