

# The Right of Reply in the Victorian Parliament

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## **Introduction**

The right of reply was introduced in the Legislative Assembly in September 1998 and the Legislative Council in the same month.

Victoria was by no means the first Parliament to introduce the right of reply. In fact it was introduced into the Commonwealth House of Representatives in 1987, the Senate in 1988, Queensland in 1995, the New South Wales Assembly in 1996 the and the New South Wales Council in 1997, and some other jurisdictions after this date.

It would be fair to say that it has not been used very often In Victoria, but then again I think this reflects two things

1. very few people in the community ever read Hansard
2. very few people know that they have the right of reply.

Even though the right of reply was introduced into the two Houses at the same time the process in each House is different.

## **The Legislative Assembly**

Victorians can seek to have a response to something said about them in the Parliament incorporated in the Parliamentary record if

1. they feel offended by remarks made

2. they feel that their privacy has been invaded
3. they have been injured as a consequence of remarks made in the House.

The process is governed by the Standing Orders of the House; in the Legislative Assembly this is Standing Order 227.

The provisions have been amended once following recommendations from the Privileges Committee in 2001 which changed the original procedures to include:

1. The Committee may only consider applications that are received within six months of the making of the comments in the House unless exceptional circumstances exist.
2. Upon the Speaker initially referring a submission to the Committee, the Secretary of the Committee must contact the complainant drawing his or her attention to guidelines to the requirement for preparing a brief draft statement in a correct form for incorporation. (Copies available)

The Assembly Fact Sheet 11 "Right of Reply by Persons Referred to in the House." Is available in the Procedure and Papers Office and I have brought some copies of this with me also.

### **The Process**

A person who feels aggrieved must write to the Speaker outlining their concern. If the Speaker feels that there are reasonable grounds under Standing Order 227 the Speaker will refer this to the Privileges Committee. Only an individual can make a submission. It must be a personal matter, not on behalf of an organisation, corporation, business unit or institution. The applicant must outline the damage that has been done to them by the comments in the House, and must agree to a

response being made public. Complaints should be made within 6 months of the comments being made.

This is not a public process but the applicant will be informed of the Speaker's decision.

The Committee then examines the complaint in private and can do this in any way that it wishes. However the Privileges Committee is not a Tribunal and its role is to put the applicant "in the same position as if he or she had been able to participate in the House", that is, "if the applicant had been a member present in the debate, he or she could have rebutted the remarks"

It is then required to report to the house either that

1. No further action be taken
2. An approved response is published , normally in the report to the House.
3. The response is incorporated in Hansard.

It is then up to the House to accept the recommendations of the Committee. In the Legislative Assembly the House has always accepted the recommendations and the recommendations have never been debated.

Since the introduction of the 'right-of-reply' there have only been a few cases that have been reported to the House.

The first case was in April 2000. A table of the applications to date follows:

## LEGISLATIVE ASSEMBLY

<b>Date of Report to Parliament</b>	<b>Persons lodging complaint</b>	<b>Complaint</b>	<b>Issue</b>	<b>Response</b>
May 2000	Mr Damien Bonnice	Complaint against the Member for Williamstown, the Hon Steve Bracks and the Minister for Major Projects, Mr John Pandazopoulos (ALP)	Complaint that his personal and professional reputation had been damaged by comments made about his performance as Project Director of the Federation Square project.	Response incorporated in the Report to Parliament
November 2000	Mr Frank Webber	Mr Ross Smith Member for Glen Waverley(LIB)	Accused Mr Webber of acting improperly in relation to the closure of an Anglican Church in Middle Park	Committee not satisfied that Mr Webber had shown that he had been adversely affected by the comments. No further action taken
October 2001	Cr. Arthur Athanasopoulos (Mayor of Kingston)	Mr Geoff Leigh, Member for Mordiallic (LIB.)	Claims regarding inappropriate behaviour relating to a planning issue	Response published with the report

October 2001	Joint submission from seven Board Members of the McIvor Health and Community Services, however only three complaints were accepted from three Members who were not re-appointed to the Committee	Complaint against Mr John Thwaites , Minister for Health (ALP) (Note. John Thwaites was a member of the Privileges Committee and withdrew from the hearing of this case)	Claim that their reputations affected both personally and professionally through their businesses as a result of comments made about the activities of the Board.	Statement incorporated in the report to the Parliament
May 2002	Mr Tom Love	The Hon Andre Haermeyer Minister for Police (ALP)	Accused Mr. Love of being a Liberal Party “warlord” and seeking compensation improperly for land	Application refused because of the general nature of Mr Love’s comments and his failure to provide specific evidence of damage to his reputation
May 2002	Mr Alan Malcolm	Mr Russell Savage. Member for Mildura (IND)	Accused Mr Malcolm of being a hypocrite in his dealings with the Barley Marketing Board	No response to request for further information. No action taken
May 2002	Mr Kenneth E Jarvis	Mr Peter Loney Member for Geelong East (ALP)	Attack on the Mayor’s capacity and links with the Liberal Party	No response for request for further information No action taken
October 2002	Mr Steve Luby	The Hon. Robin Cooper, Member for Mornington (LIB)	(Mr Cooper was a member of the Privileges Committee and withdrew from the hearing)  Complaint relates to inappropriate business connections	Response incorporated in report to Parliament
October 2002	Professor John Power Ms. Ann Morrow	Complaint against the Member for Warrandyte, Mr Phil Honeywood (LIB)	Suggested an inappropriate Relationship between the RMIT and the Labor Party	Published with the Report

April 2003	Mr Kumar Rajaratnam Mrs Karen Rajaratnam	Complaint against The Member for Hawthorn, Ted Baillieu (LIB)	Not identified	Found to be 6 months after the comments made. No exceptional circumstances were identified, so no further action taken.
October 2004	Mr Andrew Higgs	Mr Don Nardella Member for Melton (ALP)	Suggestion of forgery in relation to the Liberal Party	Response included in the report to the House with a recommendation that it be incorporated in Hansard. No motion to incorporate the response into Hansard was made at this time.  Mr Cooper sought by leave later in the day that the response be incorporated in Hansard. Leave was refused.

### **The Legislative Council**

The Legislative Council has taken a slightly different approach and left the determination of appropriate action in the hand of the President of the Council.

The Right of Reply was introduced in 1998 and is currently contained in Standing Order 22.

This process heavily lies upon that introduced into the Senate in 1988.

The person in writing to the President must claim

“that he or she 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 his or her privacy has been unreasonably invaded by reason of that reference;”

### **The Process**

The person must write to the President seeking to incorporate an appropriate response in Hansard.

If the President is of the opinion that the submission is not trivial or frivolous, vexatious or offensive in character, the President may determine that

1. No action be taken
2. A response by the person who made the submission be published by the Council and incorporated in Hansard.

The President may confer with the complainant or the Member, and shall not consider or judge the truth of any statements made in the Council or the submission

The rules for the response are that they shall be

1. Succinct and strictly relevant to the questions in issue and shall not contain anything offensive in character
2. Shall not contain any matter the publication of which would have the effect of  
\*unreasonably adversely affecting or injuring a person or unreasonably invading a person’s privacy  
\*unreasonably adding to or aggravating any such adverse effect, injury or invasion of privacy suffered by a person.

Whilst being supported by the major parties no cases came before the President until 2001.

The following table outlines the cases in the Legislative Council to this date.

Date of report to Parliament	Person lodging complaint	Complaint	Issue	Response
April 2001	South Gippsland Conservation Society on behalf of 3 members	Complaint against the Hon Ken Smith re comments made on three occasions(LIB)	Accusation against 3 members of the South Gippsland Conservation Society of extortion	No action taken
September 2001	Mr and Mrs Cuttriss	As above	As above	Further request for a right of reply refused by the President, as Mr and Mrs Cuttriss were covered by the above request.
May 2002	Mr Ian Urquhart	Complaint about statements made by The Hon Theo Theophanous(ALP)	Association with the Liberal Party and reflections on his business dealings	President allowed the incorporation of the response in Hansard
March 2004	City of Boroondara	Complaint about the Hon. David Davis (LIB)	Allegations of collusion, improper influence and tainted decision making on behalf of the Council regarding Kew Residential Services.	President allowed the incorporation of the response in Hansard
October 2005	Cr Jenny Mulholland	The Hon Bill Forward (LIB)	Improper use of mayoral vehicle, and other council matters	President allowed the incorporation of the response in Hansard.

November 2005	Catherine King MHR	Complaint about comments made by Ms Hadden (IND)	Claim that she supported the importing of overseas workers to work in Ballarat	No further action taken
November 2005	Cr Jenny Mulholland	Complaint about comments made by the Hon Bill Forward(LIB)	Re-iteration of former comments	No further action taken
November 2005	Mr. Frank Sculli	Complaint made about statements made by the Hon. Bill Forward(LIB)	Mr Forward claimed that Mr Sculli had had inappropriate dealings with the Mayor of Banyule	President allowed the incorporation of the response in the parliamentary record
June 2006	Mr Douglas Campbell	Complaint against comments made by Mr Andrew Olexander(IND) That Mr Campbell's reputation was adversely affected.	Mr Olexander claimed that Mr Campbell had used inappropriate language whilst in the public gallery	President allowed the incorporation of the response in the parliamentary record.
June 2006	Cr. Robert Godon	Comments made by the Hon Robert Mitchell (ALP)	Improper involvement in the planning process	No action taken

### **Conclusion**

Therefore it can be seen that in nearly 10 years there have only been a few requests for a 'right of reply', and there have only been a few responses actually incorporated in Hansard. The process is not well understood by Members of Parliament, nor is the opportunity well known in the community.

However the process does give the community the right to have their case heard when it may be that the concept of privilege has been abused by Members of Parliament.

I do not think that you can conclude much about the nature of complaints that come before the House. Most of them however relate to political point scoring either with members of the community or local government.

The disadvantage has to be demonstrable, and I think this is why a number of applications have failed. The Privilege Committee/President has been quite determined that the applicant must demonstrate

1. that there has been an adverse impact on their reputation or in their dealings or associations with others or,
2. there has been an injury to the occupation, trade, office or financial credit or,
3. there has been an invasion of privacy.

This is fairly difficult to substantiate and a number of applications have failed on these grounds. It is not the opportunity for residents just to disagree about something said in Parliament, nor is it an opportunity for applicants to debate statements made because they may disagree with them or they believe they are factually incorrect.

There has to be a disadvantage to the individual concerned.

It is my view that the system used in the Legislative Assembly is preferable as the Privileges Committee has a wide political representation rather than the judgement of one person. I regard the right of reply as an improvement in the accountability of Members to the community. It does provide an avenue for people who may feel real disbenefit from statements made under privilege, to have that disadvantage addressed.

In reality however if a Member of Parliament has attacked a member of the community and this is reported in the media either on a local or State level, the damage to that person's reputation has already been done. Having a reply incorporated in Parliament some months after the event is unlikely to resolve the problem.

For the person seeking the right of reply, I think the system could be improved.

Whilst members of parliament can say whatever they like, the person who wishes to have a right of reply can only reply in a way approved by the President or the Privileges Committee in the Assembly, so that the "right" of reply can be severely limited by other politicians!

The right of reply, if incorporated in Hansard, is in no way linked to the original comment, and a search through the index would not necessarily find the later entry. In my view there should be a note or link from the original comment to the right of reply.

There is no process in place where members of the public are made aware of comments or allegations made about them. In New South Wales select committees have a process in place to advise people if allegations are made about them, and they are given the opportunity to respond.

In Victoria, the process of 'right of reply' does not extend to comments made at Joint Committees or to other parliamentary processes such as questions on notice.

It is incumbent therefore for Members of Parliament to be careful about comments they make about individuals under privilege.

As the right of reply has now been operating in Victoria for 10 years it would seem to be an appropriate time to evaluate the current procedures to see if the process has fulfilled its original intentions.