

Committee inquiries

REFERRAL OF MATTERS FOR INQUIRY

The range of matters a committee is able to investigate or inquire into is restricted by the terms of reference contained in the relevant standing or sessional orders, resolution of appointment, or Act establishing the committee. A committee may have no power of inquiry or it may be free to determine its own inquiries within a general subject area (e.g. Procedure Committee). However, in a majority of cases, inquiries are referred by the House, a Minister, or in some cases the Speaker. A matter may also be referred to a committee by legislation.¹

In practice committees may either take the initiative and seek a reference or at least be involved in considering and negotiating suitable terms of reference.² In addition, the ability of general purpose standing committees to initiate any inquiry they wish to make into annual reports of government departments and authorities and Auditor-General's reports³ has enabled them to conduct inquiries into a wide range of matters. In practice the need to relate an inquiry to an annual report has been interpreted as permitting committees to take evidence in relation to any subject mentioned in a report in their area of responsibility. A committee's investigation is not limited to developments occurring during the period covered by the report. The six-monthly hearings during which the Governor of the Reserve Bank briefs the Standing Committee on Economics on current developments in monetary policy take place under the guise of the committee's review of the Reserve Bank annual report of the previous financial year.

When a matter is referred to a committee, the committee normally formally resolves to accept the reference.⁴ It has been considered that, although a Minister may refer a matter to a committee, a Minister is not able to withdraw a reference from a committee.

Avoidance of duplication of inquiries

Senate legislative and general purpose committees are prohibited from inquiring into matters that are being examined by Senate select committees.⁵ There is no equivalent rule in the House. However it has generally been considered desirable for committees to endeavour to avoid duplication with the work of other committees—for example, in inquiries by the House Standing Committee on Aboriginal Affairs and a Senate select committee in 1988, there was considerable potential for duplication, but the two committees concentrated on different matters. Such considerations also apply in respect of joint committees—for example, in the 36th Parliament the Joint Committee of Public Accounts and the Joint Committee on Migration Regulations were careful to avoid

1 Not necessarily to a statutory committee—for example, s. 8F of the *International Monetary Agreements Act 1947* provided that 'A national interest statement tabled in the Parliament under section 8D shall stand referred for inquiry and report within two months of the reference to the Joint Standing Committee on Foreign Affairs, Defence and Trade constituted under resolutions of the Senate and the House of Representatives'.

2 E.g. Standing Committee on Community Affairs, minutes 5.9.89, 24.7.90.

3 S.O. 215(c).

4 E.g. Standing Committee on Transport, Communications and Infrastructure, minutes 24.11.93.

5 Senate S.O. 25(13).

duplication in their respective inquiries into the Business Migration Program and the control of visitor entry.

In the House the procedure for referral of legislation to a standing committee was designed to be used judiciously, rather than as a routine stage in the passage of a bill. This was partly for the reason of not wishing to duplicate Senate activity in this area, with the potential for the same submissions and witnesses.⁶

In 2011 a House committee reported on a bill that had been referred to it by the Selection Committee, noting that a Senate committee was currently conducting an inquiry into the bill. The report stated that the committee did not consider that it could significantly add to the work already being undertaken and that duplication was likely from a further inquiry.⁷ Since House committees have been able to discharge their obligation to report on a bill referred to them for an advisory report by way of an oral statement to the House (*see* page 728), there have been several such statements reporting that a House committee has declined to inquire into a bill because an inquiry was considered to duplicate the work of a Senate committee.⁸

While in most instances referral of a bill to a committee of one House only, or to a joint committee, would seem preferable to separate referrals to a House and to a Senate committee, in specific circumstances it can be entirely appropriate for both a House and a Senate committee to consider the same bill. This was the case with the Judicial Misbehaviour and Incapacity (Parliamentary Commission) Bill 2012 which related to the powers of both Houses under the Constitution. However, rather than issue a call for submissions to the same stakeholders, the House committee agreed to make use of the submissions received as evidence to the concurrent Senate inquiry.⁹

To avoid duplication, if a general purpose standing committee intends to inquire into all or part of a report of the Auditor-General, the committee must notify the Joint Committee of Public Accounts and Audit of its intention, in writing.¹⁰

Scope of inquiry and procedures

The standing or sessional orders or resolution of appointment define the nature and limits of the authority delegated to each committee by the House. They contain the committee's terms of reference and powers and may contain directions which the House wishes to give, for example, in relation to procedures. A resolution may modify or extend the provisions of the standing orders and in these cases it is standard practice to include the following paragraph:

That the foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

In the case of a statutory committee, the constituting Act defines the nature and limits of the committee's authority.

6 Standing Committee on Procedure, *About time: bills questions and working hours*, PP 194 (1993) 16. The Offshore Petroleum Amendment (Greenhouse Gas Storage) Bill 2008 is an example of a bill referred to a Senate as well as a House committee.

7 Standing Committee on Social Policy and Legal Affairs, *Advisory report of the inquiry into the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011*, May 2011.

8 E.g. H.R. Deb. (18.3.2013) 2314.

9 Standing Committee on Social Policy and Legal Affairs, *Advisory report: Judicial Misbehaviour and Incapacity (Parliamentary Commission) Bill 2012 and Courts Legislation Amendment (Judicial Complaints) Bill 2012*, paras 1.13–15, 1.24–27.

10 S.O. 215(c)(iv). In practice joint committees also notify the JCPAA when they review audit reports.

Change to scope of inquiry or procedures

Amendments to resolutions of appointment have usually been initiated directly or indirectly by the committee itself. Normally a committee seeks an amendment through the Leader of the House or the Minister associated with the committee's field of inquiry. If the proposed amendment has the Government's support, the Leader of the House or the Minister then moves for its adoption by the House.¹¹ It is rare for the chair of the committee to move such an amendment.¹² Motions for controversial or unusual amendments have occasionally been preceded by the presentation of a special report by the committee explaining the need for the amendment.¹³ Amendments have included extension of time for reporting,¹⁴ alteration of quorum size,¹⁵ extension of powers,¹⁶ change in the number of Members,¹⁷ and extension of the terms of reference.¹⁸

DOCUMENTARY EVIDENCE

Invitation of submissions

It needs to be stressed that most witnesses, far from needing to be compelled to give evidence, welcome the opportunity to do so. Soon after subjects are adopted for inquiry, committees usually publicise their terms of reference and their desire to receive submissions from interested individuals or organisations. In addition, letters or messages inviting submissions may be sent directly to those who are thought to have a special interest or expertise in the field under investigation.

Use of internet

The use committees make of the internet is evolving. In recent years some committees have used social media and online forums to publicise inquiries and to obtain information. Online questionnaires have also been used. Most committee hearings are audio webcast live and video footage of some hearings is available live or as video on demand.

The general practice of publication of submissions on the internet has caused committees to be aware of, and to adapt to, privacy and other considerations which were of less concern when publication, while authorised, was in practice restricted by the constraints of earlier technology. Some practices have been adjusted—for example, addresses and contact details of private citizens making submissions may be omitted.

11 VP 1974–75/380 (28.11.1974) (change in number of members appointed to Select Committee on Specific Learning Difficulties); VP 1993–96/131 (27.5.1993) (amendment of resolution of power of Joint Committee on Corporations and Securities).

12 VP 1920–21/377 (14.10.1920) (time of reporting extended for Select Committee on Sea Carriage).

13 VP 1954–55/225 (26.5.1955) (special report from the Committee of Privileges seeking power for committee to investigate matters not referred to it by the House) *see also* Joint Committee on the Parliamentary Committee System, *Resolution of appointment of the Committee: Special report*, PP 78 (1976) 5, which sought power to retain as chair the chair of the committee in the previous Parliament (the report was not adopted by the House).

14 E.g. VP 1983–84/156 (23.8.1983); VP 1985–87/764 (14.3.1986), 886 (29.4.1986); VP 1993–96/2058 (11.5.1995); VP 2013–16/1516 (17.8.2015); VP 2013–16/761 (27.8.2014); VP 2013–16/1634 (13.10.2015) (to enable a select committee to continue its work after presentation of its report).

15 E.g. VP 1987–90/123 (20.10.1987).

16 E.g. VP 1974–75/358 (27.11.1974).

17 E.g. VP 1987–90/123 (20.10.1987); VP 2013–16/1916 (22.2.2016) (appointment of Senators as participating members of a joint committee).

18 VP 1983–84/124 (25.5.1983); VP 1985–87/87 (19.3.1985), 675 (11.2.1986).

Submissions and exhibits

There is no fixed form or format for submissions, although it assists if they are in typewritten or printed form, and if an electronic version is also provided. A single page letter and a large elaborately presented document can each be accepted as a submission. Distinguishing features of a submission are that it is:

- prepared for the purposes of presentation to a committee;
- prepared solely for the purposes of the inquiry and not previously published elsewhere;
- relevant to the terms of reference of the inquiry;
- sent ('submitted') to the committee; and
- received by it.

There is no obligation on the author of a submission to address the full terms of reference of an inquiry. Comments or information may be provided on one or some aspects only. Submissions may be received electronically or in hard copy, but in either case the submitter is required to provide their full name and sufficient information to enable the committee to make contact if necessary (for example, email or postal address).

The protection of parliamentary privilege (for example, in conferring immunity from action for defamation) applies to the preparation of a document for the purposes of or incidental to the transacting of the business of a committee and the presentation or submission of a document to a committee.¹⁹ In addition, committees may authorise the publication of submissions, thus conferring privilege on their wider publication. In the absence of such motions submissions remain confidential and any wider publication would not be protected and may give rise to a matter of contempt. In addition, if a committee directs that a submission be treated as evidence taken in private (*see* page 697) the provisions of section 13 of the Parliamentary Privileges Act in respect of unauthorised publication are available.

In addition to the protection witnesses enjoy under the House's penal jurisdiction, witnesses are protected by section 12 of the Parliamentary Privileges Act from penalty or injury on account of evidence given or to be given to a House or a committee. For the purposes of the Act the submission of a written statement by a person is, if so ordered, deemed to be the giving of evidence. Because of this, committees may choose at the first available opportunity to resolve to accept submissions they wish to receive.

Exhibits are items (most commonly documents) presented to committees or obtained by them during an inquiry—either by being sent in or by presentation during a hearing. While a submission is a document prepared solely for the purposes of an inquiry, an exhibit is not. An exhibit is a document or item created or existing for another purpose but presented to a committee or obtained by it because of its perceived relevance to an inquiry or to a matter under consideration. Typically, an exhibit would be a copy of a document or record—perhaps held by a person, organisation or department for other purposes but seen as relevant to the inquiry. Sometimes persons may seek to tender as exhibits copies of material published elsewhere. When such material is readily available, there is less point in receiving and retaining it as an exhibit. The act of presenting an exhibit to a committee would normally be protected by parliamentary privilege, although it would not be expected that committees would authorise the publication of exhibits, so

¹⁹ *Parliamentary Privileges Act 1987*, s. 16.

any wider publication would not be protected.²⁰ Sometimes committees have, however, authorised the publication of exhibits.²¹ Committees have sometimes received exhibits as confidential exhibits.²²

A document presented to a committee as a proposed submission, but which was substantially a reproduction of a document previously published by the witness, has been received as an exhibit.²³ A submission to another committee has been received as an exhibit—a course which may be seen as minimising the burden on the authors of the document.²⁴

See also discussion of return of submissions and documents below.

Search for documents

It is considered that committees do not have the power to order a general search for documents—that is, for any documents which may be relevant to a particular inquiry. For example, it would be impractical for a committee to write to a witness requesting all documents relating to an inquiry. A committee would need to provide a certain level of precision relating to its request. At the same time, a committee would not be expected to know document reference numbers or dates on which a document was created. In 2016 the House Economics Committee, as part of its review of the four major banks, exercised its power to call for documents. During public hearings the committee focused on certain topics within the context of the inquiry and called for certain documents such as board minutes relating to these issues. There was a certain level of precision with the requests and the banks complied by providing the committee with documents.

Withdrawal, alteration, destruction or return of documents

No submission received by the secretary of a committee may be withdrawn or altered without the knowledge and approval of the committee.²⁵ A submission becomes the property of a committee as soon as it is received by the secretary or by a member of the committee.

It has been common practice for committee chairs to ask a witness at a hearing whether the witness wishes to amend his or her submission in any way. Witnesses may use this opportunity to draw attention to inaccuracies or omissions. A committee secretary may not change the substance of a submission at the request of the originator, or on the secretary's own initiative, without the express approval of the committee. Where a committee decides to take oral evidence from a witness it is normal for the witness to be given the opportunity to supplement or amend a submission. Committees have also accepted revised submissions in place of versions received and published earlier.²⁶

Committees may agree to return documents to witnesses. In 1977 the Standing Committee on Expenditure agreed to return voluminous confidential documents to a department which was concerned about their security. The documents were returned only after the department gave an undertaking that the committee would be granted ready access to them whenever it decided it needed to see them. The Standing

20 *Parliamentary Privileges Act 1987*, s. 16.

21 E.g. Standing Committee on Transport, Communications and Infrastructure, minutes 17.11.1994.

22 E.g. Standing Committee on Finance and Public Administration, minutes 10.10.1991.

23 PP 115 (2016) 117.

24 E.g. Standing Committee on Finance and Public Administration, minutes 25.9.1991.

25 *And see May*, 24th edn, p. 819.

26 E.g. Standing Committee on the Environment, minutes, 4.6.2015.

Committee on Legal and Constitutional Affairs has resolved to return to a witness attachments to a submission which the witness wished to make use of in a court case. The submission itself was received as evidence.²⁷

It is a sound principle that the House, in considering a committee's report, should have ready access to the evidence upon which the report was based. This would suggest the need for a committee to exercise the utmost caution in considering the destruction of evidence presented to it, even after the House has received the committee's report.

A committee could resolve to return a submission or other document lodged with it if, for example, the submission was considered irrelevant to the committee's inquiry²⁸ or if it contained offensive or possibly scurrilous material. A rejected submission would cease to be the property of the committee and any further circulation of it would not attract privilege. In most circumstances it would be more appropriate for the committee to retain the document, not use it in its deliberations and not authorise its publication. By virtue of standing order 242(b), the fact that the document has not been published by the committee or, subsequently, by the House would preclude anyone from publishing the document as a submission to the committee without some risk in terms of the law of contempt of the House. Anyone who published a submission which had not been authorised for publication would not have the protection this would confer, and would therefore not be immune from any legal proceedings for such publication. Whether or not qualified privilege would apply would depend upon the circumstances (for example, publishers' intentions). It is highly unlikely that the House would give its protection to a person who had ignored the desire of a committee that a defamatory document remain unpublished.

ORAL EVIDENCE

Invitation to give oral evidence

Sometimes, depending on the particular circumstances, a person who has not lodged a written submission is granted the opportunity to give evidence at a hearing. Committees need however to have some knowledge of the nature of evidence to be presented so that they can consider in advance, for example:

- whether the prospective witness is likely to be acting in good faith;
- whether the evidence is likely to be relevant and/or useful in the inquiry;
- what lines of questioning they would like to adopt; and
- whether the evidence should be taken in private.

Occasionally committees have sent questionnaires to appropriate organisations and used the responses to these questionnaires to form the basis for questioning at hearings.²⁹

It is completely within a committee's discretion to decide whether or not a person who has lodged a submission should be invited to appear as a witness. When persons give oral evidence their examination is usually substantially based on their written submissions, but it is not considered that committee members must confine their questions to matters dealt with in submissions. Witnesses may also be asked their opinions of other evidence. Sometimes oral evidence is thought unnecessary and no invitation is issued.

27 Minutes 23.10.2008. More examples are listed at pages 648–9 of the 4th edition.

28 E.g. Standing Committee on Finance and Public Administration, minutes 14.11.1992.

29 E.g. *see* PP 244 (1977) 16–17.

Procedures at hearings

Hearings are normally held in public but at the committee's discretion they may be held in private. The authority to conduct public hearings is contained in standing order 235(a), which provides that a committee or a subcommittee may conduct proceedings by hearing witnesses, either in public or in private. This authorisation is reflected in the standing order which provides that a committee or subcommittee may admit visitors when it is examining a witness or gathering information in other proceedings.³⁰ Hearings are frequently attended by the general public and by media representatives. It is standard practice for the committee secretariat to notify the media in advance of proposed hearings and to advise individuals or organisations who have asked to be informed.

The chair or presiding member may open a hearing with a brief statement of its purpose and background, and may also outline the procedures to be followed by the committee. The first witness or witnesses are called to the table and may be required to swear an oath or make an affirmation (*see* page 696). The witness then sits at the table and is usually asked to state his or her full name and the capacity in which he or she is appearing before the committee, and whether the witness wishes to propose any amendment to the submission (*see* page 687). Before questions are put by committee members, it is usual for the chair to invite the witness to make a short statement to the committee.

The examination of witnesses before a committee or a subcommittee is conducted according to the procedure agreed on by the committee.³¹ While procedures vary to some extent between committees, all operate on the principle that questions are asked and answered through the chair and in an orderly manner. All members should be given an equal opportunity to put questions to a witness. Questions put to witnesses are normally substantially focussed on the witnesses' written submissions, but it is considered that committees are not confined to questioning witnesses only about matters raised in their submissions.

A member of the committee or a witness may object to a question, in which case the chair decides whether the witness should be required to answer. If there is any dissent by a Member from the chair's decision, the chair may suspend the public hearing and have the witness (and other visitors) leave while the committee determines the matter in private, by vote if necessary. The committee may insist on the question being answered (*see* page 698).

The House has adopted the following provisions to be observed by committees of the House:

The Chair of a committee shall take care to ensure that all questions put to witnesses are relevant to the committee's inquiry and that the information sought by those questions is necessary for the purpose of that inquiry.

Where a witness objects to answering any question put to him or her on any ground, including the grounds that it is not relevant, or that it may tend to incriminate him or her, he or she shall be invited to state the ground upon which he or she objects to answering the question. The committee may then consider, in camera, whether it will insist upon an answer to the question, having regard to the relevance of the question to the committee's inquiry and the importance to the inquiry of the information sought by the question. If the committee determines that it requires an answer to the question, the witness shall be informed of that determination, and of the reasons for it, and shall be required to answer the question in camera, unless the committee resolves that it is essential that it be

³⁰ S.O. 240.

³¹ S.O. 255(d).

answered in public. Where a witness declines to answer a question to which a committee has required an answer, the committee may report the facts to the House.³²

Other parts of the provisions (which are reprinted in full as an attachment to the standing orders) are quoted elsewhere in this chapter, although four particular provisions should be noted here:

A witness shall be given notice of a meeting at which he or she is to appear, and shall be supplied with a copy of the committee's terms of reference and an indication of the matters expected to be dealt with during the appearance. Where appropriate a witness may be supplied with a transcript of relevant evidence already taken in public.

A witness may be given the opportunity to make a submission in writing before appearing to give oral evidence.

A witness shall be given reasonable access to any documents or records that the witness has produced to a committee

Witnesses shall be treated with respect and dignity at all times.³³

During a hearing a witness may be asked to provide information or a document which is not immediately available. In such cases the witness may be asked or may volunteer to provide the information later in writing or, less often, at a subsequent hearing.

No person other than a member of the committee, or another Member participating by authorisation of the committee, may question a witness during examination. No witness may question a member or any other person present, but a witness may ask for clarification of a question. In 1971 the Speaker made a private ruling that (like committee staff) specialist advisers must not be permitted to question witnesses, comment on the evidence or otherwise intervene directly in formal proceedings at a public hearing.

Documents provided to a committee, including maps, diagrams, or other illustrated and written material, are sometimes included in the committee's records as exhibits (*see* page 686). Historically, where it was thought necessary to incorporate material in the transcript and there was no objection to this course, the chair usually so ordered, although modern practice is that the transcript is regarded as a record of oral evidence only, and the incorporation of material is kept at a minimum. Hansard prepares a written transcript of evidence taken at hearings. Witnesses are given an opportunity to make corrections to the transcript. However, suggested amendments are acceptable only insofar as they provide a true record of what the witness said; the meaning cannot be changed.

The House has adopted the following provisions:

Reasonable opportunity shall be afforded to witnesses to request corrections in the transcript of their evidence and to put before a committee additional written material supplementary to their evidence. Witnesses may also request the opportunity to give further oral evidence.³⁴

It is customary at the conclusion of public hearings for motions to be passed authorising the publication of the evidence taken (*see* page 717), thus conferring privilege on the publication of the transcript.

Witnesses may request that their evidence be taken in private and that documents submitted be treated as confidential. Such requests are usually but not necessarily granted (*see* 'Private or in camera hearings' at page 697).

³² *Procedures for dealing with witnesses*, Resolution of 13 November 2013, paragraphs 8 and 9.

³³ *Procedures for dealing with witnesses*, Resolution of 13 November 2013, paragraphs 3, 4, 5 and 14.

³⁴ *Procedures for dealing with witnesses*, Resolution of 13 November 2013, paragraph 15.

Less formal proceedings

Less formal means of gathering information are provided for by standing order 235, which provides for proceedings ‘in the form of any other meeting, discussion or inspection conducted under the practice of committees of the House’.

Inspections

In addition to gathering formal evidence, committees frequently undertake visits or inspections at which informal discussions take place. Such inspections permit members to familiarise themselves with places, processes, and matters which are important to their inquiries but which cannot be adequately described in formal evidence. If a quorum is present, these are formal proceedings (private meetings), and the committee’s minutes will reflect the nature of the inspections, as with private briefings.

Seminars, informal discussions, public meetings and workshops

Committees frequently decide that public meetings, round table discussions, seminars, workshops, discussions, briefings, or other similarly informal proceedings would be more appropriate for their purposes than formal hearings. Such procedures have been used:

- to conduct preliminary discussions prior to the adoption of a formal reference;
- to permit general background discussions at the beginning of an inquiry;
- as a device for discussions on matters of interest to the committee but not the subject of a formal inquiry;
- to obtain general community views; and
- to obtain expert advice and scrutinise it with experts collectively.

Committees have made use of public meetings where there is widespread community interest in an inquiry and where, because of the large number of persons involved, the formal public hearing approach may be time-consuming and repetitive, yet still exclude many from the committee’s processes. Public meetings not only enable committee members to be exposed to community attitudes but also provide an opportunity for a large number of private citizens to put views to the committee.

As an alternative to a public meeting, some committees have followed a formal public hearing with a period during which members of the public present can seek to make a short (three to five minute) statement to the committee to express their views on the matter being investigated.

Committees also sometimes arrange discussions in a ‘round table’ format, either in public or in private, at which committee members sit at a table with invited participants, each person being given the opportunity to speak and to contribute to the general discussion. Round table public hearings, while still formal hearings, have witnesses from different organisations at the table being examined simultaneously.

Seminars and workshops can allow committee members to question experts and others, and such persons can also question each other directly. This process provides immediate opportunities to both clarify the issues and explain particular opinions.

The Standing Committee on Aboriginal and Torres Strait Islander Affairs has followed a practice of conducting informal discussions with Aboriginal communities and groups and a range of other community organisations during field trips in connection with its inquiries. As these discussions are not conducted under standing orders they are much more informal and allow for a much freer interchange of views than is normally possible in a public hearing context. In particular, they enable people who may be

unwilling to submit themselves to the more formal procedures of a public hearing to express themselves openly. Hansard produces a precis of the informal discussions which is not published by the committee.

Although alternative processes of this nature can be helpful in particular inquiries, they are not regarded as a substitute for the normal hearing process under which witnesses may be questioned as fully as necessary to allow committee members to inform themselves on a matter. The information obtained in this manner does not have either the forensic value nor the technical status of formal evidence, although it can be used in committee reports, provided that the report indicates the manner in which the information has been obtained. Depending on the circumstances, the extent to which such informal proceedings enjoy parliamentary privilege could become an issue.

Minutes or a report, or both, on public meetings or seminars can be included in the committee's records as an exhibit. The Hansard record of such proceedings is often not authorised for publication although it may be incorporated into the committee's records as an exhibit.

Hearings by video or teleconference

A committee may conduct proceedings using audio visual or audio links with members of the committee or witnesses not present in one place. If an audio visual or audio link is used, committee members and witnesses must be able to speak to and hear each other at the same time regardless of location. A committee may resolve for a subcommittee to use audio visual or audio links.³⁵

The following guidelines have been issued by the Procedure Committee to assist committees in deciding whether to conduct meetings using audio visual or audio links; they are to be used by each committee as it sees fit:

1. Audio visual or audio links may be used for deliberative meetings or for hearing oral evidence from witnesses or for any other proceeding described in standing order [235(b)].
2. Audio visual or audio links should only be used to hear evidence in camera if the committee is satisfied that the evidence will not be overheard or recorded by any unauthorised person and that the transmission is secure.
3. The following factors should be considered by a committee in deciding whether an audio visual or audio link is suitable for use in any particular circumstance:
 - (a) whether use of the link will confer any benefit not available using traditional meeting processes eg cost or time savings, access to evidence not otherwise obtainable;
 - (b) any benefit of traditional methods which may be lost. These may include the value of the committee being present at a location away from Canberra; the benefit of including regional, rural and remote areas in the work of the committee; the value of the public being able to observe the committee at work; or possible restrictions on the committee being able to interact freely with a witness;
 - (c) real cost comparisons of alternative means of evidence collection;
 - (d) the type of evidence to be heard. Specialist or expert evidence may be suited to hearing in this way. Audio visual or audio links may make it feasible to hear evidence from witnesses located outside Australia, however, the committee should take into account the fact that the protection afforded by parliamentary privilege would not extend beyond Australia; and
 - (e) whether evidence is likely to be contentious or a witness needs to be tested rigorously for truthfulness or there is any concern about the identification of the witness. If the committee wishes to administer an oath an authorised officer must be present with the witness to administer it.
4. Any other factors which the committee considers relevant should be taken into account and a decision made appropriate to the particular circumstances of the proceeding, inquiry or witness.³⁶

³⁵ S.O. 235(b).

³⁶ VP 1998–2001/1985 (6.12.2000).

An early example of a public hearing conducted by video conference was a hearing of the Aboriginal and Torres Strait Islander Affairs Committee on 3 November 2003—the committee meeting was in Parliament House and the witnesses in Darwin. Hearings of this kind by video or teleconference are now not uncommon.

Committees have also taken evidence from witnesses overseas by electronic means. For example, in 2005 the Family and Human Services Committee took evidence via teleconference from a witness in Taiwan for the inquiry into the adoption of children from overseas. The teleconference took place during a private meeting of the committee. The witness was advised that her evidence would not be covered by privilege outside Australia. After seeking agreement from the witness the committee authorised publication of the transcript.

Also in 2005 the Family and Human Services Committee gave evidence collectively via a live audio-visual link to a committee of the Scottish Parliament. The ‘witnesses’ gave evidence as a committee in a formal meeting in order to ‘bolster’ the privilege associated with the hearing for both committees. The evidence given by the members of the Australian committee was taken as formal evidence by the Scottish committee and authorised by it for publication. In 2008 the Petitions Committee took evidence by teleconference from the Public Petitions Committee of the Scottish Parliament for its inquiry into electronic petitioning.

Televising, filming and recording of proceedings

Public hearings in Parliament House are regularly televised for the House monitoring system, thus allowing them to be viewed live by occupants of Parliament House and to be webcast on the Parliament’s web site. The signal is also available to networks for rebroadcast.

Committees of the House are permitted to allow the recording of their proceedings for radio or television broadcasting, subject to a number of conditions set down by the resolution of the House of 9 December 2013, which authorised the broadcasting and re-broadcasting of proceedings, including committee proceedings.³⁷ The resolution provides as follows:

3. Broadcast of committee proceedings

The following conditions apply to the broadcasting of committee proceedings:

- (a) Recording and broadcasting of proceedings of a committee is subject to the authorisation of the committee;
- (b) A committee may authorise the broadcasting of only its public proceedings;
- (c) Recording and broadcasting of a committee is not permitted during suspensions of proceedings, or following an adjournment of proceedings;
- (d) A committee may determine conditions, not inconsistent with this resolution, for the recording and broadcasting of its proceedings, may order that any part of its proceedings not be recorded or broadcast, and may give instructions for the observance of conditions so determined and orders so made. A committee shall report to the House any wilful breach of such conditions, orders or instructions;
- (e) Recording and broadcasting of proceedings of a committee shall not interfere with the conduct of those proceedings, shall not encroach into the committee’s work area, or capture documents (either in hard copy or electronic form) in the possession of committee members, witnesses or committee staff;
- (f) Broadcasts of proceedings of a committee, including excerpts of committee proceedings, shall be for the purpose only of making fair and accurate reports of those proceedings, and shall not be used for:

³⁷ VP 2013–16/182–3 (9.12.2013). The resolution replaced several earlier related resolutions dating back to 1988.

- (i) political party advertising or election campaigns; or
- (ii) commercial sponsorship or commercial advertising;
- (g) Where a committee intends to permit the broadcasting of its proceedings, a witness who is to appear in those proceedings shall be given reasonable opportunity, before appearing in the proceedings, to object to the broadcasting of the proceedings and to state the ground of the objection. The committee shall consider any such objection, having regard to the proper protection of the witness and the public interest in the proceedings, and if the committee decides to permit broadcasting of the proceedings notwithstanding the witness' objection, the witness shall be so informed before appearing in the proceedings.

Important questions of principle arise in respect of the rights and legitimate interests of witnesses and of third parties who may be the subject of comment in proceedings conducted under privilege. The atmosphere in which the televised proceedings are held might also affect a witness significantly in some cases, as experience of the televising of committee proceedings in some jurisdictions would seem to suggest. Such considerations are recognised in the conditions set out above. While the concerns of witnesses must be recognised, committees have been encouraged to permit televising of their proceedings to increase awareness of the activities of committees.

Because these matters are not covered by the Parliamentary Proceedings Broadcasting Act, the protection attaching to a television or film company may be found to be similar to that enjoyed by any person who, with the approval of the committee, published a report of its proceedings—that is, qualified privilege only may apply. Members of a committee and witnesses appearing before it would have the usual protection from action in respect of statements made by them during the proceedings. The fact that the proceedings were telecast or filmed would not alter their legal position.³⁸

Mainly because of the potential distraction to members and witnesses, photographs of committee proceedings are not permitted without the committee's authority. Committees may agree to pose for photographs before or after a hearing or during a suspension of proceedings, or may permit photographs to be taken during proceedings.

People taking film, video or still photographs should have regard to the powers of each House to deal with any act which may be held to be a contempt or a breach of the rules applying to the taking of photographs in Parliament House.

Any person permitted by a committee to attend a hearing may make an audio recording of the proceedings. It is the responsibility of the person concerned to ensure that the recording is not used improperly or in contravention of the Parliamentary Proceedings Broadcasting Act or any other statute. Further, such a recording of proceedings has no special standing in terms of the laws governing the broadcasting of proceedings or the laws of parliamentary privilege.

Compulsory attendance

If a witness declines an invitation to give evidence, a committee may order the witness to attend the committee by summons, issued by the committee secretary.³⁹ The form of the summons is not prescribed by standing orders or by statute.

It appears to have been the practice of committees established in the early years of the Parliament to issue what were called 'summonses' to prospective witnesses, whether or not they had shown any reluctance to appear. Contemporary practice is for prospective witnesses to be invited to appear before the committee. The House has adopted the following provision:

³⁸ Advice of the Attorney-General to the President of the Senate, dated 23 May 1963.

³⁹ S.O. 254. In the UK Commons the chair signs the order, *May*, 24th edn, p. 820.

A witness shall be invited to attend a committee meeting to give evidence. A witness shall be summoned to appear (whether or not the witness was previously invited to appear) only where the committee has made a decision that the circumstances warrant the issue of a summons.⁴⁰

In 1963 the Joint Select Committee on Parliamentary and Government Publications summonsed two witnesses to appear before it. The witnesses were required to give evidence in relation to alleged threats to a witness because of evidence he had given to the committee. Each summons, which was signed by the clerk to the committee (i.e. committee secretary), showed the full name, designation and address of the person being summonsed.

On occasion witnesses, although not unwilling to give evidence, have not wanted to be seen as appearing on their own initiative—for example, because of concerns that the evidence that they might give could affect future employment prospects or affect business relationships with other witnesses. In such cases committees have assisted witnesses by summonsing them to appear. The use of a summons has also been considered necessary where evidence was sought from a witness on matters subject to a requirement of confidentiality.⁴¹

On relatively rare occasions, committees intent upon obtaining evidence from particular individuals or organisations reluctant to provide it have drawn attention to their powers to compel the giving of evidence and to the possibility that failure to comply with their orders might be dealt with as a contempt of the House. This approach has usually avoided the necessity of resorting to the issue of a summons.

It is unlikely that the House would take any action against, or in relation to, a recusant witness until that witness had refused or neglected to obey a formal summons. Failure to accept an invitation or request to appear before a committee could not be interpreted as a failure to obey an order of the committee. This view was supported by the Attorney-General in 1951 when the Senate Select Committee on National Service in the Defence Force reported to the Senate the failure of the Chiefs of Staff of the armed services and other specified officers of the Commonwealth service to appear before it (*see* page 712).⁴²

In 2000 a witness was summonsed to appear before the Joint Standing Committee on Electoral Matters after he had been invited and had agreed to appear at a public hearing, but had failed to appear. The witness also failed to appear in response to the summons. However, he contacted the committee secretariat to explain his reasons for not attending, and appeared before a subsequent public hearing, and the committee did not take the matter of the failure to respond to the summons further.⁴³ In the 40th Parliament a public service official who had declined an invitation to appear before a joint committee was summonsed but still did not appear. The committee sought an explanation from the agency head and the official later appeared voluntarily. In the 43rd Parliament the House Standing Committee on Infrastructure and Communication summonsed individuals from certain companies to provide evidence in general terms on how information technology is priced in Australia, after written invitations to attend hearings had been repeatedly declined.⁴⁴

40 *Procedures for dealing with witnesses*, Resolution of 13 November 2013, paragraph 1.

41 Joint Committee of Public Accounts report no. 325, Midford Paramount case, December 1992.

42 S. Deb. (8.3.1951) 155–7.

43 H.R. Deb. (6.2.2001) 23906–7.

44 Standing Committee on Infrastructure and Communications, *At what cost? IT pricing and the Australia tax*, PP 238 (2013) 5–6.

Witness in prison

There is no longer an explicit House standing order relating to a witness in custody. According to *May*, when a witness is in prison, the person responsible for the prisoner's custody may be directed by warrant issued by the Speaker to bring the witness to be examined.⁴⁵ If a joint committee were to require a witness to be brought from prison, it would appear to be desirable that the warrant be issued jointly by the Speaker and the President. In 2000 a witness serving a sentence appeared before a joint committee, but she did so voluntarily and with the co-operation of the prison authorities.

Witnesses' expenses

Witnesses are not paid fees. At the discretion of the committee, payments may be made to witnesses for reasonable travel and accommodation expenses. This does not occur often. The ability of witnesses to appear by telephone or video link, and the capacity for committees to travel, have assisted with keeping down costs associated with witnesses appearing before committees.

Swearing of witnesses

There are no provisions in the standing orders for the swearing of witnesses. Committees of the House which have the power to call for persons, documents and records have the power to administer an oath to witnesses. This power is derived from the United Kingdom House of Commons by virtue of section 49 of the Constitution and on the basis that the UK Parliamentary Witnesses Act 1871 empowered the House of Commons and its committees to administer oaths to witnesses and attaches to false evidence the penalties of perjury.⁴⁶ There has been some doubt cast on whether joint committees⁴⁷ have this power⁴⁸ but some, such as the Joint Committee on Foreign Affairs, Defence and Trade, have sworn witnesses. According to *May*, a witness who refused to be sworn or to take some corresponding obligation to speak the truth could be dealt with by the House for contempt.⁴⁹

The practice of swearing witnesses has become less common in recent years. Committees may exercise their discretion as to whether they require a witness to take an oath. In some situations it may be regarded by a committee as unnecessary in view of the House's power to punish a witness who gives false evidence even when not under oath. If witnesses are not sworn, the committee should formally warn that the deliberate misleading of the committee may be regarded as a contempt of the House.

A reluctant witness, especially one who has been summonsed, should probably be sworn to impress upon him or her the importance and solemnity of the occasion and to ensure that an obligation to tell the whole truth is understood.

A witness who does not wish to take an oath is given the opportunity to make a solemn affirmation. The oath or affirmation is administered to the witness by the

45 *May*, 24th edn, p. 820. See also Senate S.O. 180; former House S.O. 361 (until 1998); *Parliamentary Privileges Act 1987*, s. 14, and '*Bankstown Observer* (Browne/Fitzpatrick) Case' in the Ch. on 'Parliamentary privilege'.

46 Opinion of Solicitor-General, dated 8 August 1941. This view was supported by the Solicitor-General in 1958 in an opinion given to the Senate Select Committee on Payments to Maritime Unions. Greenwood and Ellicott believed there was 'room for doubt' as to whether this was the correct view as the precise limits of section 49 had not been determined, PP 168 (1972) 12.

47 That is, other than statutory committees given the power by legislation, e.g. *Public Works Committee Act 1969*, s. 20; *Public Accounts and Audit Act 1951*, s.10.

48 Opinion of Solicitor-General, dated 8 August 1941.

49 However, it is now not usual for House of Commons select committees to examine witnesses on oath except upon inquiries of a judicial or other special character. *May*, 24th edn, p. 824.

committee secretary. The oath and affirmation used by committees of the House take the following form:

Oath

Secretary: Please take the Bible in your right hand. Do you swear that the evidence you shall give on this examination shall be the truth, the whole truth, and nothing but the truth. So help you God.

Witness: I do. So help me God.

Affirmation

Secretary: Do you solemnly and sincerely affirm and declare that the evidence you shall give on this examination shall be the truth, the whole truth, and nothing but the truth.

Witness: I do.

An oath need not necessarily be made on the authorised version of the Bible. Every witness taking an oath should take it in a manner which affects his or her conscience regardless of whether a holy book is used or not.⁵⁰

Private or in camera hearings

The standing orders refer only to private hearings; these are the same thing as in camera hearings referred to in the Parliamentary Privileges Act and in former standing orders. Private or in camera hearing of evidence is explicitly provided for by standing order 235 as follows: ‘A committee or a subcommittee may conduct proceedings . . . by hearing witnesses, either in public or in private’.

Visitors, including committee members’ personal staff and other Members who are not members of the committee, must leave when a committee or subcommittee is conducting a private hearing.⁵¹

Witnesses may request a private hearing but a committee will agree only for compelling reasons. Evidence which committees would normally take in private and not publish because of possibly adverse effects includes: evidence which might incriminate the witness, commercial-in-confidence matters, classified material, medical records and evidence which may bring advantage to a witness’s prospective adversary in litigation. In the last case the witness could be disadvantaged by having the details of a case made known to an adversary or by informing the adversary of the existence of certain evidence relevant to the witness’s case and even how the evidence might be obtained. Other reasons for private hearings could include evidence likely to involve serious allegations against third parties, a matter which is sub judice (*see* page 714) or a matter on which a Minister may otherwise claim public interest immunity (*see* page 710). When a witness makes an application for a private hearing, the committee decides the issue on the balance of the public interest and any disadvantage the witness, or a third party, may suffer through publication of the evidence.

The House has adopted the following provisions in relation to the taking of in camera evidence:

A witness shall be offered, before giving evidence, the opportunity to make application, before or during the hearing of the witness’s evidence, for any or all of the witness’s evidence to be heard in camera, and shall be invited to give reasons for any such application. The witness may give reasons in camera. If the application is not granted, the witness shall be notified of reasons for that decision.

Where a witness objects to answering any question put to him or her on any ground, including the grounds that it is not relevant, or that it may tend to incriminate him or her, he or she shall be invited to state the ground upon which he or she objects to answering the question. The committee may then consider, in camera, whether it will insist upon an answer to the question, having regard to the

⁵⁰ Advice of Attorney-General’s Department, dated 16 February 1962, on the swearing in of Members (*see* Ch. on ‘Members’).

⁵¹ S.O.s 240, 241.

relevance of the question to the committee's inquiry and the importance to the inquiry of the information sought by the question. If the committee determines that it requires an answer to the question, the witness shall be informed of that determination, and of the reasons for it, and shall be required to answer the question in camera, unless the committee resolves that it is essential that it be answered in public. Where a witness declines to answer a question to which a committee has required an answer, the committee may report the facts to the House.

Where a committee has reason to believe that evidence about to be given may reflect on a person, the committee shall give consideration to hearing that evidence in camera.⁵²

Where a committee has wished to take evidence in public but wished also to protect the privacy of persons or their families, it has allowed witnesses to be identified as "Witness 1, etc", although the secretariat has obtained the witnesses' names.⁵³ UK House of Commons committees have occasionally taken evidence from witnesses whose names are not divulged where it is thought that 'private injury or vengeance might result from publication'.⁵⁴

Even though evidence is taken in private or documents received in confidence there can be no absolute guarantee that the evidence or documents will not at some future date be authorised for publication—see 'Disclosure of private or in camera evidence' below.

The Standing Committee on Aboriginal and Torres Strait Islander Affairs has on several occasions taken evidence in private which witnesses knew beforehand would be authorised for publication. This approach has been followed in order to make the process of giving evidence less stressful for the witnesses.

Answers to questions, provision of information

A committee may demand that witnesses answer questions. *May* states that witnesses are bound to answer all questions put to them and cannot be excused on grounds such as that:

- they may become subject to a civil action;
- they have taken an oath not to disclose a matter;
- a matter was a privileged communication (for example by a client to a solicitor);
- they have been advised that they cannot answer without the risk of incriminating themselves or being exposed to a civil suit; or
- they would be prejudiced as defendants in pending litigation.

It is acknowledged that some of these grounds would be accepted in a court of law. *May* also notes that a witness cannot refuse to produce documents in his or her possession on the ground that they are under the control of a client who has given instructions that they not be disclosed without the client's authority.⁵⁵

Section 10 of the *Evidence Act 1995* provides that that Act does not affect the law relating to the privileges of any Australian Parliament or any House of any Australian Parliament.

As a committee may only exercise compulsive powers in relation to matters which the House has delegated to the committee by way of its terms of reference, a witness may object to a question on the grounds that it is outside the committee's terms of reference or that the terms of reference are outside the House's constitutional powers.

If a witness objects to a question the committee may, and frequently does, exercise its discretion in the witness's favour. If the objection is overruled, the witness is required to

52 *Procedures for dealing with witnesses*, Resolution of 13 November 2013, paragraphs 6, 9 and 10.

53 E.g. Standing Committee on Family and Community Affairs, *Every picture tells a story: Inquiry into child custody arrangements in the event of family separation*, Dec 2003, Appendix D.

54 *May*, 24th edn, p. 840.

55 *May*, 24th edn, p. 823.

present the oral or documentary evidence required. Failure to provide such evidence may be reported to the House and the witness may be punished for contempt.

The House has adopted the following provisions:

The Chair of a committee shall take care to ensure that all questions put to witnesses are relevant to the committee's inquiry and that the information sought by those questions is necessary for the purpose of that inquiry.

Where a witness objects to answering any question put to him or her on any ground, including the grounds that it is not relevant, or that it may tend to incriminate him or her, he or she shall be invited to state the ground upon which he or she objects to answering the question. The committee may then consider, in camera, whether it will insist upon an answer to the question, having regard to the relevance of the question to the committee's inquiry and the importance to the inquiry of the information sought by the question. If the committee determines that it requires an answer to the question, the witness shall be informed of that determination, and of the reasons for it, and shall be required to answer the question in camera, unless the committee resolves that it is essential that it be answered in public. Where a witness declines to answer a question to which a committee has required an answer, the committee may report the facts to the House.⁵⁶

There has been no case where a witness, after declining to answer a question from a committee, has been reported to the House by that committee. If a committee wished to raise a matter it could resolve that the Chair, pursuant to standing order 51, raise the issue in the House as a matter of privilege. However, it is always preferable for a committee to resolve disputes with witnesses rather than escalate them to the House.

In 1982 the Joint Committee of Public Accounts summonsed the Commonwealth Crown Solicitor to appear before it with a number of files the committee considered would be pertinent to an inquiry. The Crown Solicitor refused to produce the documents sought by the committee, and in answer to a question without notice the Attorney-General stated that the reason the Crown Solicitor would not produce the documents was on the ground of legal professional privilege.⁵⁷ On the following day the chair of the committee, by leave, made a statement to the House to the effect that the Commonwealth Crown Solicitor's claim was inappropriate. In addition, the chair incorporated a legal opinion supporting the committee's argument and the chair also drew attention to the Greenwood and Ellicott paper which stated:

It also follows from the wide powers which committees can exercise that, if ordered to produce a document which contained communications which were privileged before Courts of law (e.g. between solicitor and client), a person would be in contempt if he did not do so.

Although these privileged communications are usually respected by committees, committees are not restricted in the same way as the Courts.⁵⁸

Committees have at times had to negotiate with witnesses who were reluctant to provide specified evidence. The success of committees in such negotiations has been largely due to their ability to draw attention to their undoubted powers and the means by which they may be enforced.⁵⁹

The House has adopted the following provision to be observed by committees:

Where a committee desires that a witness produce documents or records relevant to the committee's inquiry, the witness shall be invited to do so, and an order that documents or records be produced shall be made (whether or not an invitation to produce documents or records has previously been made) only where the committee has made a decision that the circumstances warrant such an order.⁶⁰

56 *Procedures for dealing with witnesses*, Resolution of 13 November 2013, paragraphs 8 and 9.

57 H.R. Deb. (19.10.1982) 2163.

58 *Parliamentary committees: powers over and protection afforded to witnesses*, Paper prepared by I. J. Greenwood and R. J. Ellicott, PP 168 (1972) 33.

59 E.g. see p. 721 (Select Committee on Road Safety case).

60 *Procedures for dealing with witnesses*, Resolution of 13 November 2013, paragraph 2.

For discussion of the effect of a secrecy provision in an Act on the provision of information to a parliamentary committee see ‘Statutory secrecy provisions’ in Chapter on ‘Parliamentary committees’.

Evidence from Commonwealth public servants

The House has adopted the following provision to be observed by committees of the House:

A departmental officer shall not be asked to give opinions on matters of policy, and shall be given reasonable opportunity to refer questions asked of him or her to superior officers or to the appropriate Minister.⁶¹

The Government has issued guidelines to assist official witnesses in their dealings with the Parliament—*Government guidelines for official witnesses before parliamentary committees and related matters*.⁶² As the title suggests the guidelines are intended to provide general guidance, and not inflexible rules. Basically their purpose is to assist Commonwealth public servants appearing before parliamentary committees by informing them of the principles they are required by the Government to follow. However, the guidelines state that they must be read in conjunction with relevant parliamentary and statutory provisions.⁶³

The guidelines set out the Government’s views on matters such as: attendance at committee hearings; the Government’s expectations in the content of submissions; privilege considerations; aspects which might give rise to claims for public interest immunity; publication provisions; means of correcting evidence; and discretions relating to the extent to which the guidelines are applied.

Whilst these guidelines have not been accepted or endorsed by either House, they were issued after consultation with parliamentary staff and should be regarded as an attempt to assist government personnel and the Parliament by setting down the basic position of the Executive on a wide range of detailed matters connected with the operations of committees.

In 1969 the Joint Committee of Public Accounts set down its practice on questions to public servants about government policy. This practice, while to some extent reflecting the particular concerns of that committee, nevertheless represents a sensible balance between meeting the needs of most investigatory committees and recognising the role and responsibility of public servants. The joint committee said:

This Committee does not examine public servants on matters of Government policy. The understanding of Government policy, however, is itself essential to the effective operation of the Committee during specific inquiries as the Committee is concerned with the administrative workings of such policy. In these circumstances, the Committee has normally proceeded on the basis of asking public servants to outline for it the particular policy of the Government which is being administered by them. It does not ask public servants, however, to comment on the adequacy of such policies. It is not unusual to find that in the implementation of Government policy, departments and authorities develop administrative policies. In the past, the Committee has regarded this type of policy as within its purview and has examined public servants in the administrative policy field.⁶⁴

(See also ‘Public interest immunity’ at page 710.)

61 *Procedures for dealing with witnesses*, Resolution of 13 November 2013, paragraph 13. The 2015 government guidelines are consistent with this provision.

62 Department of the Prime Minister and Cabinet, Canberra, February 2015. This paper sets down similar guidelines to those originally presented to the House in 1978 and updated in 1984 and 1989.

63 Guidelines, paras. 2–3.

64 Joint Committee of Public Accounts, *114th Report*, PP 162 (1969) 3.

Evidence from State public servants and State Members

State public servants have appeared before House and joint committees in response to an invitation. The need to have due regard to the position and responsibilities of State and Territory Governments is recognised. Most recent practice has been for committee chairs to write to the relevant State or Territory Premiers or Chief Ministers seeking co-operation with inquiries. Subsequently contact may occur at staff level. Co-operation is usually forthcoming but in some cases State Governments have been seen as unhelpful because of either refusal to co-operate or failure to contribute to an inquiry.⁶⁵

As with Commonwealth officials it is accepted practice that State officials will not be asked to comment on government policy. In fact, State authorities have often insisted on agreement to this condition before permitting their officials to give evidence. Committee requests for personal appearances by State officials are usually directed to the relevant Minister, unless a contact official has been nominated, and adequate notice of the need for attendance is given.

The question of State public servants being compelled to give evidence before committees of the House of Representatives poses special problems, as constitutional issues are added to those relating to the role and responsibilities of government officials.

As noted previously, it is unclear in law as to whether the Commonwealth Houses and their committees have the full investigatory powers of the House of Commons or whether they are limited to those matters on which the Commonwealth Parliament may legislate. If the latter were the case, committees of the House could not expect that any demand that witnesses attend before them and give evidence on matters outside these constitutional limits could be enforced; beyond those limits evidence could be sought only on a voluntary basis from any person.

No committee of the Commonwealth Parliament has been prepared to summons a State public servant or Minister to give documentary or oral evidence which they have been unwilling to provide. If such a summons were issued, a State Government could seek to challenge it in the High Court or simply claim public interest immunity. In the highly unlikely event of either House of the Commonwealth Parliament attempting to deal with a State Minister or Government for contempt, the matter would appear to be one to be decided by the High Court.

In 1953 the Parliamentary Standing Committee on Public Works sought the Solicitor-General's advice as to its power to summons a State official to give evidence before it. The Solicitor-General considered the matter so doubtful that the advice given was against making a test case by summoning a State official.⁶⁶ The relevance of this opinion to the powers of other committees is unclear as the Public Works Committee derives its power from statute, whereas committees appointed by resolution or pursuant to standing or sessional orders, given the appropriate authority, enjoy the powers of committees of the House of Commons as at 1901 by virtue of section 49 of the Constitution.

In light of the unclear constitutional situation, a committee would be wise to assume it would be found not to have authority to summons State officials or State Ministers to provide oral or documentary evidence where such persons have not provided material requested. A further complication could arise in the case of a former or retired State

⁶⁵ House of Representatives Standing Committee on Aboriginal Affairs, *Lack of co-operation by the Queensland Government*, PP 282 (1982); Joint Select Committee on Telecommunications Interception, *Report, dated 20 November 1986, incorporating dissenting report*, PP 306 (1986).

⁶⁶ Opinion by Solicitor-General, to the Secretary of the Parliamentary Standing Committee on Public Works, dated 16 September 1953.

official. It would seem that if such a person is a citizen without any immunity he or she could be compelled to appear. However, difficult questions could arise if a committee sought to compel the production of information in respect of his or her duties as a State official. Advice can be sought in particular cases, and this was done in 1982 when the Standing Committee on Aboriginal Affairs was concerned over what it regarded as a lack of co-operation by a State Government in two of its inquiries. The committee sought the Attorney-General's advice, which confirmed that the committee did not have the power to require the attendance of State officials. If the resolution of appointment of the committee was to be amended to give the committee this power, then the Attorney-General's advice was that serious constitutional questions would arise. The committee felt that it was being hampered in making worthwhile recommendations and it reported its view that the State Government deserved strong condemnation for its lack of willingness to co-operate with the committee.⁶⁷

During the course of an inquiry into the Australian Loan Council in 1993 a Senate select committee sought to receive evidence from five Members of State Parliaments. The committee recommended in a special report that the Senate ask the State Houses involved to require the attendance of the Members in question. The Senate passed such a motion.⁶⁸ *Odgers* reports that the Houses of the Victorian Parliament did not agree to require their Members to attend, but gave leave for them to appear if they thought fit and the Legislative Assembly of New South Wales accepted a statement by its Speaker that it did not have the power to compel its Members to appear before the committee.⁶⁹ In the event none of the Members listed in the motion gave evidence.⁷⁰

In 2006 a Tasmanian government Minister and a Western Australian government Parliamentary Secretary appeared voluntarily before the Standing Committee on Family and Human Services. Neither was sworn although it was the practice of the committee at the time to swear witnesses. It was considered that there was some doubt about the committee's power to swear witnesses from another Parliament.

Evidence from Members and Senators

Members or Senators may appear as witnesses before committees of the House. If a Member, including a Minister, volunteers to appear before a House committee the Member may do so and does not need to seek leave of the House. Ministers, including a Prime Minister, have appeared before committees of the House, and Ministers have briefed general purpose standing committees at the commencement of inquiries, or held discussions with committee members concerning possible inquiries or previous inquiries.⁷¹

May states:

A Member who has submitted himself to examination without any order of the House is treated like any other witness.⁷²

If a committee wishes a Member to attend as a witness, the chair writes inviting the Member to attend. If the Member refuses to attend or to give evidence or information as

⁶⁷ VP 1980–83/1161 (28.10.1982); PP 282 (1982).

⁶⁸ J 1993–96/565–6 (5.10.1993). The resolution also requested the House of Representatives to require the Commonwealth Treasurer's attendance, *see* p. 704.

⁶⁹ *Odgers*, 14th edn, p. 565.

⁷⁰ PP 449 (1993).

⁷¹ For example, Hon. J. Anderson, Deputy Prime Minister and Minister for Transport and Regional Services, meeting with members of Transport and Regional Services Committee, March 2003; Hon. M. Ferguson, meetings in the 42nd and 43rd Parliaments; and Hon. I. Macfarlane, meetings with the Agriculture and Industry Committee in the 44th Parliament.

⁷² *May*, 24th edn, p. 821.

a witness, the committee cannot summon the Member again, but must advise the House.⁷³ It is then for the House to determine the matter. These procedures have never had to be implemented in the House of Representatives. In appearing before the Committee of Privileges, Members (and Senators) have been required to swear an oath or make an affirmation and have been dealt with in the same manner as other witnesses.⁷⁴

Senators cannot be compelled by the House to appear before it or before one of its committees, or to produce evidence. The same applies to Members in relation to the Senate and its committees. This immunity is entrenched practice, but derives ultimately from section 49 of the Constitution.

In 1920 a Senator of his own volition sought consent of the Senate to appear before a House of Representatives committee. The Senate, by motion, granted the Senator leave to attend and give evidence to the committee if he thought fit.⁷⁵ However, in 1973 and 1976 Senators appeared before the House of Representatives Standing Committee on Environment and Conservation without seeking leave of the Senate. Their appearance was at their own request. In 1994 members of a Senate committee attended a private meeting of the House Procedure Committee for informal discussions on the Senate committee's experience with videoconference technology. In 2015 a Senator made a submission to the House of Representatives Standing Committee on the Environment and appeared before the committee without seeking leave of the Senate.⁷⁶

There have been several instances of Members of the House who have appeared, as Ministers, before Senate committees.⁷⁷ In 1981 the Speaker appeared voluntarily before the Senate Select Committee on Parliament's Appropriations and Staffing. In the same year the chair of the Senate Standing Committee on Finance and Government Operations wrote to a former Minister regarding an apparent conflict in evidence given to the committee during the course of its inquiry into the Australian Dairy Corporation and its Asian subsidiaries.⁷⁸ The former Minister, who at the time had another portfolio, wrote to the committee. There was still a discrepancy between the sworn evidence of one witness and the recollections of the Minister as expressed in the letter. As a result of further correspondence the Minister made a personal explanation in the House of Representatives. During the course of this personal explanation the Minister stated:

I do not believe it appropriate that a Minister of this House should appear and give sworn evidence before a committee of the other House.⁷⁹

A copy of this personal explanation was forwarded to the committee and the chair made a statement to the Senate shortly afterwards.

Standing orders of both Houses set down procedures to be followed if a member of the other House is to be called to give evidence before a committee. If a committee of the House wishes to call before it a Senator who has not volunteered to appear before it as a witness, a message is sent to the Senate by the House requesting the Senate to give leave to the Senator to attend for examination.⁸⁰ Upon receiving such a request the

73 S.O. 249(b).

74 E.g. PP 77 (1994) 3.

75 J 1920–21/153 (15.9.1920); S. Deb. (15.9.1920) 4531.

76 PP 115 (2016) 110, 120.

77 *Odgers*, 6th edn, pp. 871–2, and 14th edn, pp. 562.

78 Senate Standing Committee on Finance and Government Operations, *The Australian Dairy Corporation and its Asian subsidiaries*, PP 153 (1981) 149–51, 166.

79 H. R. Deb. (7.5.1981) 2110.

80 S.O. 251; e.g. VP 1993–96/596 (15.12.1993); VP 1998–2001/2075 (8.2.2001).

Senate may authorise the Senator to attend.⁸¹ In 1901 the Senate ordered that a Senator have leave to give evidence before the Select Committee on Coinage if that Senator thought fit⁸² and, in response to a request from the House of Representatives,⁸³ the Senate has granted leave to authorised Senators to attend and give evidence before the House of Representatives Committee of Privileges.⁸⁴ The Senators appeared and gave evidence having sworn oaths/made affirmations.⁸⁵ On 7 March 2001 the Senate gave leave to seven Senators, members of the Joint Standing Committee on Foreign Affairs, Defence and Trade, to appear before the House Privileges Committee, ‘subject to the rule, applied in the Senate by rulings of the President, that one House of the Parliament may not inquire into or adjudge the conduct of a member of the other House’.⁸⁶

Using similar procedures to those followed by the House,⁸⁷ the Senate has requested that Members of the House be given leave to attend and be examined by Senate committees. House standing order 252(a) provides that if the Senate asks the House by message for a Member to attend before the Senate or one of its committees, the House may authorise the Member to attend, provided the Member agrees. In its early years the House several times resolved to grant such leave to Members, adding the qualification that the Member may attend and give evidence ‘if he think fit’.⁸⁸ In 1913 the House considered a request from the Senate that six named Members, including the Prime Minister, be granted leave to be examined as witnesses before the Senate Select Committee on General Elections. On motion moved by the Prime Minister, the House resolved to grant such leave only to three of the Members, all of them opposition Members. The Prime Minister explained that the three government Members whose attendance had been requested were not included in the motion because they did not desire to attend.⁸⁹ After the receipt of the message from the House was announced in the Senate, the President stated in answer to a question:

The Senate sent a request to the House of Representatives; but it is no part of our duty, nor have we any right to dictate to the House of Representatives as to what it should or should not do. We have no right to ask it to give reasons as to why it has complied with a part and not the whole of our request.⁹⁰

A similar request for the attendance of Members before another Senate committee was received later on the same day and was dealt with in the same manner.⁹¹

In 1993 the Senate requested the House to require the attendance of the Treasurer before a Senate select committee. The request was considered by the House, but rejected, in the following terms:

That the House of Representatives . . . :

- (a) notes that the Senate’s request that the House require the attendance of a Member of the House before a committee of the Senate does not conform with the practice of requesting the House to give leave for a Member to attend;
- (b) resolves that it is not appropriate that a Minister of this House should appear and give evidence before a committee of the Senate against the Minister’s will;

81 E.g. J 1993–96/1077–8 (17.12.1993).

82 VP 1901–02/109 (26.7.1901), 113 (31.7.1901); J 1901–02/88 (26.7.1901).

83 E.g. VP 1985–87/1365 (27.11.1986); VP 1993–96/596 (15.12.1993).

84 E.g. VP 1985–87/1430 (17.2.1987); H.R. Deb. (17.2.1987) 147; J 1993–96/1077–8 (17.12.1993).

85 PP 77 (1994) 3.

86 J 1998–2001/4043 (7.3.2001); VP 1998–2001/2157 (7.3.2001).

87 Senate S.O. 178.

88 VP 1904/100 (30.6.1904), 114 (14.7.1904); VP 1909/189 (11.11.1909). *See also* VP 1914/74 (10.6.1914) (consideration of Senate message made order of day but lapsed at dissolution of House shortly after).

89 VP 1913/130 (31.10.1913); H.R. Deb. (31.10.1913) 2830–1.

90 S. Deb. (31.10.1913) 2824.

91 VP 1913/134 (31.10.1913); H.R. Deb. (31.10.1913) 2843.

- (c) further resolves that it is not appropriate that any Member of the House of Representatives be required to appear before a committee of the Senate against the Member's will;
- (d) confirms that it is for each Member to determine whether the Member thinks fit to appear before a committee of the Senate; and
- (e) declines to require the Honourable John Dawkins MP to attend before the Senate Select Committee on the Functions, Powers and Operation of the Australian Loan Council.⁹²

In 1901 the House granted a Member leave, if he thought fit, to attend and be examined by a select committee of the Victorian Legislative Assembly.⁹³

The Speaker has declined an invitation to make a submission to the Senate Committee of Privileges in connection with an inquiry into matters arising at a joint meeting of the Houses held in October 2003, instead referring the committee to a statement he had made in the House.⁹⁴ In 2005 Speaker Hawker made a written submission to the Senate Committee of Privileges in connection with a general inquiry into the unauthorised disclosure of committee information.

Evidence from former Members and Senators

Opinions differ over whether the immunity of Members and Senators from compulsion by the other House extends to former Members and Senators. *Odgers* asserts that it does not, citing the case of a former Treasurer and a former Prime Minister, no longer Members, being summonsed to appear before a Senate committee in 1994.⁹⁵ This question again arose in 2002 during the inquiry by the Senate Select Committee on a Certain Maritime Incident. Legal opinions provided to the committee and advice from the Clerk of the House and the Clerk of the Senate did not agree on whether the former Minister for Defence, a former Member of the House, could be compelled to give evidence to the committee relating to his conduct as a Minister and Member. The view of the Clerk of the House was that the immunity probably extended to former Members.⁹⁶ The committee accepted the view of the Clerk of the Senate, but decided not to summons the former Minister, stating that it believed the summons would be contested in the courts, incurring expense for the taxpayer and causing delay to the inquiry.⁹⁷

Evidence from parliamentary staff

If a committee of the House wishes to call a Senate staff member to give evidence, a message is sent to the Senate by the House requesting the Senate to give leave to the staff member to attend for examination.⁹⁸ Upon receiving such a request the Senate may authorise the staff member to attend the committee.⁹⁹ If the Senate were to ask the House by message for an employee of the House to attend before the Senate or one of its committees, the House may instruct its own employee to attend.¹⁰⁰

In 1975 the Joint Committee on the Parliamentary Committee System formally sought the agreement of the Clerk of the House to the appearance before it of two employees of his department. It was noted that the standing orders concerning the

92 J 1993–96/565–6 (5.10.1993); VP 1993–96/342–3 (7.10.1993).

93 VP 1901–02/149 (4.9.1901).

94 VP 2002–04/1402–3 (10.2.2004) (papers tabled).

95 *Odgers*, 14th edn, p. 566 (Senate Select Committee on Certain Foreign Ownership Decisions in relation to the Print Media).

96 Senate Select Committee on a Certain Maritime Incident, *Report*, October 2002. The advice and opinions referred to (from B. Walker SC, Professor G. J. Lindell and A. Robertson SC) are included at appendix 2 of the report. *Odgers*, 14th edn, p. 566.

97 *ibid.*, p. xv.

98 S.O. 251.

99 Senate S.O. 179.

100 Senate S.O. 178; S.O. 252(b).

appearance of parliamentary staff before committees were always interpreted liberally. Formal approval was sought in this case because the staff concerned sought to present personal views rather than to speak on behalf of the department. The Clerk gave approval.

In 1971, at the request of the Committee of Privileges, the Clerk Assistant and the Serjeant-at-Arms appeared before the committee to give their account of proceedings referred to in an article in the *Daily Telegraph* which had been referred to the committee.¹⁰¹ In 1973 the Secretary of the Joint Committee on Prices appeared before the Committee of Privileges and in 1987 members of a select committee secretariat gave evidence to the committee. In 1978 the Clerk of the House and the Serjeant-at-Arms appeared before the Senate Committee of Privileges to give evidence relating to the security of Parliament House.¹⁰² The Clerk and other House staff have appeared informally before the Broadcasting Committee and the Procedure Committee to discuss matters being considered by the committee.¹⁰³ At the request of the Standing Committee on Community Affairs, the Assistant Secretary (Committees) appeared at a public hearing in 1995 in relation to the committee's inquiry into migrant access and equity.¹⁰⁴

The Clerk of the House is routinely invited to make submissions to inquiries by the Procedure Committee, and to provide oral evidence. In recent years the Clerk has lodged written submissions addressing issues relevant to the administration or interests of the Department of the House of Representatives to several committee inquiries. The Clerk and senior officers have also given oral evidence in association with submissions.¹⁰⁵ In 2015 the Clerk provided submissions to the Senate Standing Committee on Finance and Public Administration inquiries into the Parliamentary Service Amendment Bill 2014, and into proposed Parliament House security upgrade works. In 2017 the Clerk gave oral evidence to the Senate Select Committee on a National Integrity Commission in relation to the adequacy of the Australian Government's framework for addressing corruption and misconduct. In 2018 the Clerk made a submission to the Joint Committee on Intelligence and Security, providing advice on the privilege implications of the Foreign Influence Transparency Bill 2017.

Secretariat staff members of joint committees have appeared before the Privileges Committee in relation to inquiries into the possible unauthorised disclosure of proceedings or private evidence.¹⁰⁶

Evidence as to proceedings

Only if the House grants permission, may an employee of the House, or other staff employed to record evidence before the House or one of its committees, give evidence relating to proceedings or give evidence relating to the examination of a witness.¹⁰⁷

In 1974 an inquiry was conducted by the Australian Broadcasting Control Board into allegations that certain television stations had suppressed television news coverage of a report presented by the Joint Committee on Prices.¹⁰⁸ The Clerk of the House received a

101 Standing Committee of Privileges, *Article published in Daily Telegraph, 27 August 1971*, PP 242 (1971) 39–45.

102 Senate Standing Committee of Privileges, *Appropriate means of ensuring the security of Parliament House*, PP 22 (1978).

103 E.g. PP 364 (1994), PP 108 (1995) and PP 158 (2000).

104 PP 24 (1996) 130.

105 E.g. Joint Standing Committee on Electoral Matters inquiries into civics and electoral education (2007), and into the delivery of electoral education (2015); Joint Committee of Public Accounts and Audit inquiries into effects of the ongoing efficiency dividend on smaller public sector agencies (2008), and into the development of the Commonwealth Performance Framework (2015).

106 E.g. PP 135 (1987). Standing Committee of Privileges, *Report concerning the possible unauthorised disclosure of in camera evidence to the Defence Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade*, June 2001.

107 S.O. 253. See Ch. on 'Documents'.

108 PP 326 (1974); VP 1974–75/177 (19.9.1974).

request for the clerk to the committee (i.e. committee secretary) to make a statement and, if necessary, to give evidence before the board of inquiry. In giving permission for the clerk to the committee to make a statement it was made clear that he could not give evidence in respect of any proceedings before the committee without the leave of the House, and that this restriction was imposed by the standing orders of both Houses.¹⁰⁹ The clerk to the committee appeared before the inquiry and read a statement in which no reference was made to any proceedings of the committee and which contained only factual information as to when and to whom copies of the committee's report had been distributed after it had been presented to the Senate and ordered to be printed.

Subsection 16(6) of the Parliamentary Privileges Act provides that neither the section nor the Bill of Rights prevents or restricts the admission in evidence and examination of proceedings in connection with the prosecution for an offence against an Act establishing a committee. Section 17 of the Act provides, inter alia, that a certificate signed by or on behalf of the Speaker or President, or a committee chair, in relation to committee records, evidence, etc. is evidence of the matters contained in the certificate. (*And see* Chapter on 'Parliamentary Privilege'.)

Evidence from judges

Judges have appeared as witnesses before House committees. These appearances have been voluntary and have concerned matters of law and policy.¹¹⁰

WITNESSES

Protection of witnesses

Resolution on procedures for dealing with witnesses.

On 13 November 2013 the House adopted a resolution setting out procedures to be observed by committees of the House in their dealings with witnesses.¹¹¹ The resolution was in very similar terms to a draft resolution originally proposed by the Procedure Committee in its 1989 report *Procedures for dealing with witnesses*.¹¹² Although not formally adopted, the draft resolution had served as a de facto guide to committee practice in the intervening years. Excerpts from the 2013 resolution are quoted under the relevant headings below.

Privacy

A straightforward protection which can be afforded a witness is that of taking evidence in private and treating documents in confidence—see 'Limited publication' at page 717; 'Private or in camera hearings' at page 697; 'Documents treated in confidence' at page 721; and 'Expunging material from evidence' at page 724, and 'Televising, filming and recording of proceedings' at page 693.

109 S.O. 253; Senate S.O. 183.

110 E.g. *Transcript of evidence*, Standing Committee on Family and Community Affairs (10.10.2003); *Transcript of evidence*, Standing Committee on Legal and Constitutional Affairs (26.7.2005); *Transcript of evidence*, Standing Committee on Aboriginal and Torres Strait Islander Affairs (30.3.2010). Magistrates have also appeared before committees.

111 *Procedures for dealing with witnesses*, Resolution of 13 November 2013, VP 2013–16/58–9 (13.11.2013). The resolution is reproduced in full as an attachment to the Standing Orders.

112 *Committee procedures for dealing with witnesses*, PP 100 (1989). Recommendation repeated: *10 years on*, PP 91 (1998); *It's your House*, PP 363 (1999); *Building a modern committee system*, PP 144 (2010). A similar resolution was adopted by the Senate in 1988.

Counsel or advisers

There is no provision in the standing orders nor any statutory provision for a witness before a committee of the House to be represented by counsel. Furthermore, there is no precedent for such representation before the House of Representatives or its committees.

Over the years, however, there have been precedents¹¹³ for House of Representatives committees permitting witnesses to have counsel or advisers present in an advisory capacity during hearings, and the House has more recently formally adopted the following rule:

A witness may make application to be accompanied by counsel or an adviser or advisers and to consult counsel or the adviser(s) in the course of the meeting at which he or she appears. If such an application is not granted, the witness shall be notified of reasons for that decision. A witness accompanied by counsel or an adviser or advisers shall be given reasonable opportunity to consult with counsel or the adviser(s) during a meeting at which he or she appears.¹¹⁴

On several occasions the Committee of Privileges has permitted witnesses to be accompanied by, and to confer with, counsel or advisers. Historically, save for seeking clarification on and making submissions concerning their own involvement, counsel have not been permitted to address the committee directly. However, procedures agreed by the Committee of Privileges and Members' Interests in 2009 now provide for a more extensive role for such persons—*see* Chapter on 'Parliamentary privilege'.

Persons permitted to accompany and assist witnesses need not be lawyers—for example, Members appearing before the Committee of Privileges have been accompanied by research assistants.¹¹⁵ On another occasion a Member appearing before the Committee of Privileges was accompanied by another Member.¹¹⁶ The role of such persons was emphatically that of adviser rather than representative. Witnesses have been permitted to converse freely with such advisers, but the advisers have not been permitted, for example, to:

- present evidence in support of a witness or the witness's submission;
- object themselves to procedures or lines of questioning pursued by the committee;
- or
- ask questions of witnesses or committee members.

On one occasion a committee intervened to prevent what it saw as an attempt to avoid these restrictions by the passing of notes to a witness or providing the witness with written responses to questions.¹¹⁷ These limitations attempt to ensure that the witness answers the questions and presents his or her own evidence while at the same time allowing the witness to readily obtain, for example, advice or help as to legal or other issues arising in the giving of evidence.

Counsel or advisers may be permitted, at the committee's discretion, to attend a private hearing of a client's evidence.

Protection in legal proceedings

Standing order 256 states 'Any witness giving evidence to the House or one of its committees is entitled to the protection of the House in relation to his or her evidence'. The protection available to witnesses however also has another source—it derives from Article 9 of the Bill of Rights (applying by virtue of section 49 of the Constitution and

113 Covered in previous editions (6th edn pp. 693–5).

114 *Procedures for dealing with witnesses*, Resolution of 13 November 2013, paragraph 12.

115 PP 77 (1994)—minutes 17.12.93.

116 PP 498 (1989)—minutes 28.11.89.

117 Standing Committee on Aboriginal Affairs, *Transcript of evidence*, 2 December 1983, p. 1362.

re-asserted by the Parliamentary Privileges Act) which declares that . . . ‘proceedings in Parliament ought not to be impeached or questioned in any court . . .’. The term ‘proceedings in Parliament’ includes committee proceedings,¹¹⁸ and witnesses giving evidence to a committee are protected from legal proceedings on account of that evidence (for a more complete coverage *see* Chapter on ‘Parliamentary privilege’). However, it is important that a committee is properly constituted at the time of a hearing, to remove any possible concerns as to the protection of parliamentary privilege.

The protection afforded a witness in relation to oral evidence given before a committee also applies to documentary evidence that the witness may give.¹¹⁹ This protection is now conferred explicitly under the Parliamentary Privileges Act. The protection of parliamentary privilege applies as equally to the evidence of a voluntary witness as it does to the evidence of a witness summonsed by the committee. It is immaterial whether the evidence is given on oath or not.¹²⁰

The absolute privilege derived from the Bill of Rights and enhanced by the Parliamentary Privileges Act applies essentially to oral or written statements which form part of parliamentary proceedings, although some related actions may also be covered. The Parliamentary Papers Act provides absolute protection to the publisher of documents, including submissions and transcripts, whose publication is authorised by the House or its committees. While a statement made by a witness in the course of committee proceedings is absolutely privileged, the same statement repeated by that witness elsewhere is not. Similarly, the separate publication of a document presented to a committee is not absolutely privileged unless publication has been authorised by the House or the committee.

Protection from improper interference, arrest and molestation

Witnesses are protected from arrest (other than on criminal charges), molestation, tampering or other acts aimed at deterring them from giving evidence before a committee or punishing or penalising them for having given such evidence under the traditional power of the House to punish contempts. These matters are described in detail in the Chapter on ‘Parliamentary Privilege’.

Witnesses are also protected by the Parliamentary Privileges Act. Section 12 of the Act provides for substantial penalties to be imposed against persons or corporations:

- who by fraud, intimidation, force or threat, by the offer or promise of any inducement or benefit, or by other improper means, influence a person in respect of evidence given or to be given before a committee or who induce another person to refrain from giving evidence; or
- who inflict any penalty or injury upon, or who deprive of any benefit, a person on account of the giving or proposed giving of any evidence, or any evidence given or to be given, before a committee.

For the purposes of the Act the submission of a written statement is, if so ordered by the House or a committee, deemed to be the giving of evidence, and thus the protection of section 12 can be gained. Under section 14 of the Act, a person who is required to attend

118 *Parliamentary Privileges Act 1987*, s. 16(2). The enactment of the Parliamentary Privileges Act followed, and sought to reverse, judicial decisions which had allowed witnesses before Senate committees to be examined in court as to their committee evidence.

119 *Parliamentary committees: powers over and protection afforded to witnesses*, Paper prepared by I. J. Greenwood and R. J. Ellicott, PP 168 (1972) 31.

120 Opinion of Solicitor-General, dated 8 August 1941.

before a House or a committee on a particular day may not be required to attend before a court or a tribunal, or arrested or detained in a civil cause, on that day.

Witnesses may also be protected by the Act establishing a statutory committee.

If a committee becomes aware of allegations that an offence or contempt may have been committed against a witness or a prospective witness, it should take all reasonable steps to ascertain the facts of the matter. This could include publishing details of the allegation to the person alleged to have offended, so that the person is able to respond.¹²¹

The House has adopted the following provision:

Where a committee has any reason to believe that any person has been improperly influenced in respect of evidence which has been or may be given before the committee, or has been subjected to or threatened with any penalty or injury in respect of any evidence given or in respect of prospective evidence, the committee shall take all reasonable steps to ascertain the facts of the matter. Where the committee considers that the facts disclose that a person may have been improperly influenced or subjected to or threatened with penalty or injury in respect of evidence which may be or has been given before the committee, the committee shall report the facts and its conclusions to the House.¹²²

The careful and proper application of procedural rules and discretions is significant in the protection of committee witnesses, as well as other persons—*see* immediately below, and also ‘Private or in camera hearings’ at page 697.

Protection of persons referred to in evidence

The House has adopted the following provisions for the assistance or protection of persons referred to in evidence:

Where a committee has reason to believe that evidence about to be given may reflect on a person, the committee shall give consideration to hearing that evidence in camera.

Where evidence is given which reflects upon a person, the committee may provide a reasonable opportunity for the person reflected upon to have access to that evidence and to respond to that evidence by written submission or appearance before the committee.¹²³

Public interest immunity

The Executive Government may seek to claim immunity from requests or orders by a committee for the production of certain oral or documentary evidence on the grounds that the disclosure of the evidence would be prejudicial to the public interest. (More general aspects of the doctrine of ‘public interest immunity’, sometimes described as ‘crown privilege’, are covered in the Chapter on ‘Documents’.)

The Government’s strong position

Commonwealth public servants appearing before committees as private individuals to give evidence unrelated to their past or present duties as public servants, are bound by orders of a committee. They are open to the same penalties as any other citizen if they do not obey. While in principle they are equally bound when summoned to give evidence relating to their official duties, in practice their position is somewhat different. This is particularly so with respect to failure or refusal to answer a committee’s questions. They may, under certain circumstances and on behalf of their Minister, claim public interest immunity. It is doubtful, however, whether a public servant, even on instructions from a Minister or the Government, could refuse or fail to obey a summons to attend a committee.¹²⁴

121 E.g. Standing Committee on Transport, Communications and Infrastructure, minutes, 31.5.1995; and *see* H.R. Deb. (7.9.2000) 20385–7.

122 *Procedures for dealing with witnesses*, Resolution of 13 November 2013, paragraph 16.

123 *Procedures for dealing with witnesses*, Resolution of 13 November 2013, paragraphs 10 and 11.

124 *See* Enid Campbell, ‘Parliament and the Executive’, in Leslie Zines (ed), *Commentaries on the Australian Constitution*, Butterworths, 1977, p. 100.

The Joint Committee on the Parliamentary Committee System reported that the application of the rules of public interest immunity was ‘one of the most vexed questions of committee procedure’. It concluded:

Notwithstanding the authoritative literature and knowledge of the application of the rule in other Commonwealth Parliaments the Committee finds itself unable to offer any clarification of the rules.¹²⁵

Public interest immunity in relation to parliamentary proceedings involves the following considerations:

- the belief that the House’s power to require the production of documents and giving of evidence is, for all practical purposes, unlimited;
- the view that it would be contrary to the public interest for certain information held by the Government to be disclosed; and
- the fact that the Government, by definition, has the support of the majority in the House and, by standing order or resolution of the House, on its committees.

There is obvious potential for Governments, by use of their strong position in this regard, to undermine the efforts of the House and its committees to call Governments to account. The Joint Committee on the Parliamentary Committee System commented:

It is clear that crown privilege is relied on by governments to protect themselves. The protection of the confidentiality of advice to Ministers or security matters is a shield behind which witnesses sometimes retreat.¹²⁶

Government guidelines

The principles upon which Governments have proceeded to deal with public interest immunity were summarised by Greenwood and Ellicott. They drew on two documents in particular, namely, a letter of November 1953 to the Joint Committee of Public Accounts from the Prime Minister and a letter of September 1956 from the Solicitor-General to the Senate Regulations and Ordinances Committee.¹²⁷ These principles have been substantially incorporated in the Government’s *Guidelines for official witnesses before parliamentary committees and related matters*. Key points in the guidelines include the following:

- the privilege involved is not that of the witness but that of the Crown;
- if a witness attends to give evidence on any matter in which it appears that issues of public interest immunity may be concerned, the witness should endeavour to obtain instructions from a Minister beforehand as to the questions, if any, which the witness should not answer;
- if questions arise unexpectedly in the course of an inquiry, the witness should request postponement of the taking of evidence to enable the Minister to be consulted;
- if the Minister decides to claim immunity, normally the Minister should write to the committee chair to that effect;
- should the committee regard information about which a claim for public interest immunity may be made as necessary, consideration should be given to agreeing on a means of making it available in some other form, such as private evidence; and

¹²⁵ Joint Committee on the Parliamentary Committee System, *A new parliamentary committee system*, PP 128 (1976) 87.

¹²⁶ PP 128 (1976) 87.

¹²⁷ Both are quoted in full in *Odgers*, 6th edn, pp. 830–44.

- before deciding whether to grant a certificate, the Minister should carefully consider the matter in the light of the relevant principles.¹²⁸

It needs to be emphasised that the fourth point, regarding a letter from a Minister to a committee, simply recognises that it is the Minister, not a staff member, who may claim public interest immunity. In this respect it therefore represents sound practice. However, as already indicated, a committee may negotiate further with a Minister¹²⁹ or the Prime Minister. Ultimately it is, in principle, open to the committee to challenge the Minister's claim in the House by raising the Minister's or the Government's behaviour as a possible contempt of the House.¹³⁰

Committee practice

The reality of the Government's effective capacity to refuse to disclose information or documents to the House or its committees, no matter how important they might be for an investigation, is not lost on Members. Neither the House nor the Senate has ever persisted in its demands for government documents or oral evidence to the point where a charge of contempt has been laid.

In 1951 the Government directed that the Chiefs of Staff of the armed forces and other officials should not attend before a Senate select committee inquiry into national service. The grounds upon which the Government based its direction are of interest. In the first instance the Prime Minister indicated that permanent officers of the armed services or the public service should not be expected to comment on government policy, and that they would have no alternative but to claim privilege if such opinions were sought. He therefore saw little purpose in their attendance. The committee chair responded to the Acting Prime Minister that the committee was primarily concerned with factual evidence, not with comment and opinions on government policy, and that it would therefore invite the officials to give evidence. After the officials had received letters inviting them to attend to give evidence the Acting Prime Minister informed the committee that Cabinet considered the officials' participation in the inquiry 'would be against the public interest'. He stated further:

It is quite impossible to draw the line between what your Committee may call "factual" and what is "policy", and it should not be for any official or for the Committee, in the view of the Government on matters which may touch security, to decide whether it is either one or the other.¹³¹

The failure of the committee to summons the officials was not mentioned but the Attorney-General subsequently referred to it in debate.¹³²

In its report to the Senate the committee acknowledged that it was for the Senate itself to decide on any action to be taken. The committee, nevertheless, drew attention to established practice that neither House of the Parliament could punish any breach or contempt offered to it by any member of the other House. It recommended therefore that in so far as House of Representatives members of Cabinet were concerned, a statement of the facts should be forwarded to that House for its consideration. As to the Senate members of Cabinet the committee recommended:

128 *Parliamentary committees: powers over and protection afforded to witnesses*, Paper prepared by I. J. Greenwood and R. J. Ellicott, PP 168 (1972) 37–8.

129 See for example efforts by the Joint Committee on Migration Regulations to gain access to departmental information and the compromise whereby the committee chair and deputy chair were given access to the papers. Committee minutes of proceedings 19.7.90, 4.9.90, 18.10.90.

130 *And see* Senator Greenwood's later view on the conclusiveness of a Minister's certificate, PP 215 (1975) 51.

131 S 2 (1950–51) 8.

132 S. Deb. (8.3.1951) 154–7.

... if the Senate decides that a breach of privilege has been committed, the action to be taken by the Senate should be aimed at asserting and upholding the cherished principle of the right of the Senate to the free exercise of its authority without interference from the Cabinet.¹³³

The special report was presented to the Senate and a motion for its adoption was moved.¹³⁴ The debate on the motion was not concluded when the Senate was dissolved on 19 March 1951. As the matter was not revived the issues were left unresolved. It could be argued, as the committee did, that the failure to issue a summons was not the central issue, as this was not given as a ground for the Government's refusal to permit the officers to attend.

Significant factors in the case were that the committee consisted entirely of opposition Senators, and also that the Opposition held a majority in the Senate at the time. If this had not been so, it can be surmised that events would have been very different—indeed the committee may not have been appointed. The case perhaps best illustrates the importance of party-political realities in any consideration of parliamentary access to information held by the Government.

In 1975 the Senate Committee of Privileges reported on the refusal of officials, at the direction of the Government, to give oral or documentary evidence at the Bar of the Senate on the Whitlam Government's overseas loans negotiations. The committee divided on party lines.¹³⁵

In 1967 the Joint Committee on the Australian Capital Territory requested the Department of the Interior to produce all relevant papers in connection with applications to subdivide rural land in the Australian Capital Territory and certain acquisitions. The department, on the advice of the Attorney-General, replied:

Advice now received is that the Minister can properly object to produce to a Parliamentary Committee Departmental documents that disclose the nature of recommendations or advice given by officials, either directly to Ministers or to other officials, in the course of policy making and administration. If it were otherwise, there would be a danger that officials would be deterred from giving full and frank advice to the Government.

On the basis of this advice, the Minister has personally considered what documents should be given to your Committee; he has decided that he must object to the production of documents to the Committee that represent recommendations or advice given or to be given to the Government by public officials, for the reason that these are a class of document which it would be contrary to the public interest to disclose.

However, documents that do not come within this category and are relevant to the matters mentioned in your letters of 28th and 30th November, are produced for the Committee's examination. These papers provide the factual information requested by the Committee.¹³⁶

The committee did not press for the other documents requested.

While objections by officials to presenting certain evidence have sometimes been readily accepted, the evidence has at times been so important that a committee has persisted. This persistence has taken the form of requiring the witness or prospective witness to consult with the departmental secretary or Minister, or of the committee or its chair negotiating with the departmental secretary or the Minister.

In 1977 a subcommittee of the Standing Committee on Expenditure was able to obtain important information, initially refused, after the Minister's approval was obtained. No objection was raised to the committee's subsequent publication of the evidence. The same committee was unsuccessful in certain other attempts to obtain information from the Government and brought this to the attention of the House in a

133 S 2 (1950–51) 16.

134 J 1950–51/215 (7.3.1951), 220 (8.3.1951).

135 Senate Standing Committee of Privileges, *Matters referred by Senate resolution of 17 July 1975*, PP 215 (1975).

136 Letter from the Secretary, Department of the Interior, dated 21 December 1967.

report describing its first year of operation. The committee indicated that the Prime Minister had refused to provide it with two sets of documents, even on a confidential basis, on the ground that they were internal working documents. Attention was drawn to the fact that the documents would have helped the committee to determine which matters under investigation it should concentrate upon and in turn would have enabled it to use its limited resources to greater advantage. The committee urged Governments, if necessary, to find ways of minimising restrictions on information to be made available to committees, for example, by providing documents with offending material removed.¹³⁷ This latter course has in fact been followed on occasions.

The subject of relations between committees and the Executive arose in 1992–3 in respect of a Senate select committee inquiry into the Australian Loan Council. This case is referred to at pages 702 and 704 in relation to evidence from State Members and Members of the House. In 1994, in relation to a Senate select committee inquiry concerning the print media, the Treasurer instructed officials not to give evidence or to provide certain documents to the committee.¹³⁸

The course mostly followed by committees in an attempt to circumvent the possibility of public interest immunity being claimed is to undertake to treat oral or documentary evidence as confidential. This confidentiality can create issues when the committee comes to drafting its report, for it runs the risk of publishing conclusions and recommendations which on the published evidence may appear unjustified. Apart from this, the public is prevented from drawing its own conclusions on the basis of all the material evidence.

Sub judice convention

In the case of a matter awaiting or under adjudication in a court of law the House imposes a restriction upon itself to avoid setting itself up as an alternative forum to the courts and to ensure that its proceedings are not permitted to interfere with the course of justice. This restriction is known as the sub judice convention and is described more fully in the Chapter on ‘Control and conduct of debate’.

Committees are bound by the convention. The chair of a committee, like the Speaker, may exercise discretion as to whether the convention should apply in a given situation, but the chair must have regard to the principles followed by the Speaker in the House and to the option open to a committee to take evidence in private, an option which is not open to the House in any practical sense.

If a chair decides the sub judice convention should apply to evidence being given, he or she may direct that the line of questioning and evidence be discontinued or that the evidence be taken in private. A chair would normally wish to consult committee members on such a matter. It would also be open to any other member to initiate a resolution of the committee to order visitors to leave.¹³⁹

If the evidence is taken in private and it subsequently becomes clear that it does not warrant the application of the sub judice convention, the committee can authorise publication. Equally, a committee may publish such evidence once the possibility of its publication interfering with the course of justice has passed.

In 1975 a witness before a subcommittee of the Standing Committee on Environment and Conservation sought to give evidence relating to the circumstances of a legal action

¹³⁷ PP 244 (1977) 20.

¹³⁸ *And see Odgers*, 14th edn, p. 501.

¹³⁹ S.O. 240.

against him in the High Court. The evidence was taken in private.¹⁴⁰ In the 37th Parliament the Standing Committee on Transport, Communications and Infrastructure conducted an inquiry into aviation safety. At the time of the inquiry a coronial inquest was taking place into one aircraft accident and a judicial inquiry was being conducted into another. Having regard to the sub judice convention, the committee agreed to a resolution that it should take no evidence on either matter unless the resolution was rescinded, and it completed the inquiry without changing this decision.¹⁴¹ In 2000 care was taken to try to ensure, by taking evidence in private, that a committee inquiry concerning military justice did not cause any interference with actions being taken within the Defence Forces.¹⁴² In 2013 an inquiry by the Committee of Privileges and Members' Interests was suspended because of sub judice considerations after a Member had been charged with criminal offences.¹⁴³

Charges against Members

Unless another committee is so directed by the House, only the Committee of Privileges and Members' Interests may inquire into, or make findings in respect of, the conduct of a Member of the House. If a committee other than the Committee of Privileges and Members' Interests receives information or an allegation charging a Member, the committee must inform the Member concerned of the details of the charge and give the Member an opportunity to make a statement on the matter to the committee. Unless the committee considers the matter is without substance, it must report the matter to the House and may not proceed further on the information or allegation without being directed by the House to do so.¹⁴⁴

In 1975 a witness before the Joint Committee on Pecuniary Interests of Members of Parliament alleged that a Senator, who was a member of the committee, was ineligible under paragraph 44(v) of the Constitution to serve as a Senator. The committee resolved that, in accordance with standing orders, the Senate should be acquainted with the relevant evidence. The chair wrote to the President describing the information brought before the committee and enclosing a copy of the relevant transcript of evidence. The President reported to the Senate, read the committee chair's letter and presented the letter and transcript of evidence.¹⁴⁵ The Senator was given leave to make a statement in which the allegations were denied and it was indicated that the Senator had resigned from the committee as the nature of the allegations was such as to place in question the Senator's objectivity in dealing with the issues before the committee.¹⁴⁶ The Senate resolved to refer the matter to the High Court of Australia, in its jurisdiction as the Court of Disputed Returns, and to grant the Senator two months' leave of absence.¹⁴⁷ The Court upheld the Senator's eligibility to serve as a Senator.¹⁴⁸

140 A Senate committee in 1973 decided not to take evidence from a witness in similar circumstances, see *Odgers*, 6th edn, p. 361.

141 PP 480 (1995) 5.

142 H.R. Deb. (9.11.2000) 22635–6.

143 H.R. Deb. (14.2.2013) 1387.

144 S.O. 250.

145 J 1974–75/597 (15.4.1975).

146 S. Deb. (15.4.1975) 981–4.

147 J 1974–75/628–9 (22.4.1975).

148 For a detailed discussion of pecuniary and personal interest see Ch. on 'Members', and for a more detailed description of the case see *Odgers*, 6th edn, pp. 172–4.

Offences by witnesses

Conduct by a witness which improperly interferes with the free exercise by a committee of its authority or functions may be found to constitute contempt of the House. Such an offence may be punished by the House and penalties can include fine and imprisonment. These matters are discussed in more detail in the Chapter on 'Parliamentary privilege'.

Examples of contempt cited by *May* in relation to the conduct of witnesses include:

- interrupting or disrupting the proceedings of a committee;
- refusing to be sworn or to take some corresponding obligation to speak the truth;
- refusing to answer questions;
- refusing to produce evidence or destroying documents;
- prevaricating;
- giving false evidence;
- wilfully suppressing the truth;
- persistently misleading a committee;
- trifling with, or being insolent or insulting to a committee;
- appearing in a state of intoxication before a committee;
- removing any record or document from the Clerk's custody or falsifying or improperly altering such records or documents;
- non-compliance with orders for attendance made by committees with the powers to send for persons;
- disobedience to committee orders for the production of documents;
- avoiding or assisting someone else to avoid being served with a summons.¹⁴⁹

If a witness who is summonsed fails or refuses to attend before a committee, or to give evidence before it, the committee may draw the circumstances to the attention of the House, which may deal with the matter as it sees fit.¹⁵⁰ Other contempts are in practice dealt with in a similar way, using the procedures established for raising a matter of privilege in the House.

A committee's report to the House on an alleged contempt must be made at the earliest opportunity if the matter is to be given precedence.¹⁵¹ The report, therefore, might be in the form of a statement to the House by the chair. Despite this requirement it is considered that a committee should seek to form some preliminary view on a matter, and that a matter should be identified in specific terms, before bringing it before the House, and unless the committee has done so the Speaker may direct it to consider the matter further. In order to inform itself on the matter a committee would take such steps as writing to the person or organisation suspected of offending or alleged to have offended, indicating the nature of the concern and seeking a response. By such means a committee can seek to have the essential allegations clarified so that it can make an informed decision as to whether to proceed with a complaint to the House.¹⁵²

¹⁴⁹ *May*, 24th edn, pp. 252–4, 837–41.

¹⁵⁰ S.O. 254(b).

¹⁵¹ S.O. 51(d); *see also* Ch. on 'Parliamentary privilege'.

¹⁵² E.g. H.R. Deb. (7.9.2000) 20385–7.

PUBLICATION OF EVIDENCE

Authorisation for publication of evidence

Standing order 242 provides for committees to authorise publication of evidence:

- (a) A committee or subcommittee may authorise publication of evidence given before it or documents presented to it.
- (b) A committee's or subcommittee's evidence, documents, proceedings and reports may not be disclosed or published to a person (other than a member of the committee or parliamentary employee assigned to the committee) unless they have been:
 - (i) reported to the House; or
 - (ii) authorised by the House, the committee or the subcommittee.
- (c) A committee may resolve to:
 - (i) publish press releases, discussion papers or other documents or preliminary findings; or
 - (ii) divulge evidence, documents, proceedings or reports on a confidential basis to persons for comment.
- (d) A committee may resolve to authorise a member of the committee to give public briefings on matters related to an inquiry. An authorised member may not disclose evidence, documents proceedings or reports which have not been authorised for publication. The committee shall determine the limits of the authorisation.

The Parliamentary Papers Act, *inter alia*, empowers a committee of either or both Houses to authorise the publication of any document laid before it or of any evidence given before it. It also grants protection from civil or criminal proceedings to any person publishing any document or evidence published under an authority given pursuant to the provisions of the Act. Section 16 of the Parliamentary Privileges Act provides that the term 'proceedings in Parliament' includes 'the formulation, making or publication of a document including a report, by or pursuant to an order of a House or a committee and the document so formulated, made or published'. This means that absolute privilege attaches to such actions and documents and, by virtue of section 3 of the Act, the reference to a committee includes a subcommittee. A practical difference between the two statutory provisions is that motions to authorise publication under the Parliamentary Papers Act can only be moved in respect of evidence which has been given or documents which have been presented to a committee (or a House). This limitation does not apply in respect of action under section 16 of the Parliamentary Privileges Act.

The Senate has ordered the publication of documents held by a committee but which the committee had decided not to publish.¹⁵³

Standing order 237 authorises committees to consider and make use of the evidence and records of similar committees appointed during previous Parliaments. Some committees have relied on this standing order to authorise a wider publication of such material than was authorised by the predecessor committee.¹⁵⁴ See also 'Access to old evidence and documents' at page 722.

Limited publication

A committee may limit the publication of confidential documents or evidence to particular individuals. This approach may be adopted, for example, to enable individuals to respond to allegations made against them in a submission or at a private hearing by another witness.¹⁵⁵

¹⁵³ J 1998–2001/4830 (30.8.2001).

¹⁵⁴ Since current committees have become custodians of the web pages containing the reports and submissions of their predecessors, S.O. 237 has been seen as providing authority for the management and editing of such content.

¹⁵⁵ E.g., Committee of Privileges, minutes, 25.11.1993 (publication of transcript of in camera evidence to another party, PP 78 (1994)); minutes, 24.8.1995 (publication of submission to another party, PP 376 (1995)).

Limited publication may also be used to enable the testing of conclusions or the vetting of draft reports by persons with expert knowledge. For example, the Standing Committee on Expenditure held private hearings towards the end of its inquiries to test its preliminary conclusions with relevant government departments.¹⁵⁶ The hearings were held in private to avoid speculation about the committee's recommendations. Departments were informed that the evidence would be published when the committee's report had been presented. In May 2008 the Joint Committee of Public Accounts and Audit authorised the release, on a confidential basis, of its draft report of the inquiry into certain taxation matters to the Treasury 'for factual and technical comment' prior to adoption of the report by the committee.

Partial publication

In some cases committees have authorised the publication of submissions or other documents with certain information deleted. Names and addresses of persons may be suppressed, for example, to allow views or facts to be disclosed while still protecting privacy.¹⁵⁷ It is now the usual practice for personal details such as addresses to be omitted from submissions from individuals published on committee web pages.

On occasion a submission may contain material that a committee considers should not have widespread dissemination protected by parliamentary privilege. For example, material may be regarded as offensive or relate to a matter that is sub judice. In such cases the committee may decide to authorise publication with certain material omitted. In 2010 the Joint Select Committee on Cyber-Safety suppressed footnotes in a submission which linked to 'Refused Classification' material and placed the following disclaimer on its website:

The Committee reserves the right to exercise its discretion not to publish any submission, or part of a submission, which in its view contains objectionable material, or material that is or purports to be Refused Classification or links directly to Refused Classification material.

(See also 'Expunging of material from evidence' at page 724.)

Disclosure of private or in camera evidence

It is an offence under the Parliamentary Privileges Act, as well as a contempt of the House, for any person to disclose or publish a document or evidence taken in camera without the authority of the House or a committee. The Parliamentary Privileges Act also provides that a court or tribunal may not require the production of, or admit into evidence, such documents or evidence.¹⁵⁸ The Parliamentary Privileges Act, however, does not prevent disclosure during the course of proceedings in Parliament, and the House has the power, which is delegated to committees by standing order, to authorise the publication of any evidence given or any document presented¹⁵⁹ even if it has initially been taken in private. The final authority in the publication of evidence given in private rests with the House itself.¹⁶⁰ Although it is highly improbable that the House would insist on the publication of evidence received in a private hearing, a committee cannot give a witness an absolute guarantee that the witness's evidence will not be published (*but see* paragraph (c) of the 1998 resolution noted below).

156 E.g. Standing Committee on Expenditure, PP 244 (1977) 18–19.

157 E.g. Standing Committee on Family and Human Services, minutes, 9.3.2005.

158 *Parliamentary Privileges Act 1987*, ss. 13, 16.

159 S.O. 242(a).

160 *And see May*, 24th edn, p. 827.

Witnesses granted permission to give their evidence in private should be warned that it is within the committee's (or the House's) discretion to publish the evidence subsequently, if it thinks fit.¹⁶¹ For obvious reasons a committee should authorise publication of private evidence only when there is a real and justifiable need or when subsequent events have removed the need for confidentiality, or when the evidence given does not warrant the confidential treatment which it was originally thought might be necessary. For example, having heard the evidence the committee might form the opinion that the arguments in favour of publication in the public interest carry more weight than the grounds of confidentiality claimed, or that a claim that the evidence is sub judice (*see* page 714) cannot be sustained. Committees, while not authorising publication of evidence generally, may in some cases need to authorise publication of the evidence to a person named in it, so that the person may be informed of statements made and given the opportunity to respond.¹⁶²

In the 34th and 35th Parliaments petitions were received from solicitors requesting leave to take possession of certain 'confidential' committee documents in order that they might be produced in court. In each case the House referred the matter to the appropriate committee to determine whether the documents should be presented to the House by the committee for the purpose of the House's granting leave for a subpoena to be issued and served for the production of the documents in court. In the first case the committee recommended that the action proposed be taken and the documents were subsequently presented to the House, the subpoena was served and the House approved the documents being passed to the appropriate court. In the second case, while the matter for which the documents were originally required was settled out of court before the committee reported, the committee nevertheless advanced two propositions to the House, namely, that:

- there was a strong presumption that evidence taken in camera, or documents treated as confidential by parliamentary committees should not be released; and
- this presumption was related to the effectiveness in the working of parliamentary committees.¹⁶³

If a committee does want to publish evidence taken in private, it should inform the witness and consider any objections raised.

The House has adopted the following provision in relation to the disclosure of in camera evidence:

Before giving any evidence in camera a witness shall be informed whether it is the intention of the committee to publish or present to the House all or part of that evidence, that it is within the power of the committee to do so, and that the House has the authority to order the production and publication of undisclosed evidence. Should the committee decide to publish or present to the House all or part of the evidence taken in camera, the witness shall be advised in advance. A member, in a protest or dissent added to a report, shall not disclose evidence taken in camera unless so authorised by the committee.¹⁶⁴

161 This is the usual situation. Exceptionally, in the case of the Joint Committee of Public Accounts and Audit consent of the witness is necessary (*Public Accounts and Audit Committee Act 1951*, s. 11A).

162 This course has been followed by the Committee of Privileges, e.g. minutes, 14.12.1993, PP 78 (1994). *See* S.O. 242(c)(ii).

163 House of Representatives Standing Committee on Transport, Communications and Infrastructure, *Release of Tyre Safety Inquiry documents*, PP 41 (1989) 6.

164 *Procedures for dealing with witnesses*, Resolution of 13 November 2013, paragraph 7.

Disclosure of in camera evidence in dissenting reports

In accordance with the resolution of the House cited above, a member, in a protest or dissent added to a report, shall not disclose evidence taken in camera unless so authorised by the committee.

The 1998 resolution on the disclosure of in camera evidence (*see below*) was considered to apply to dissenting reports, although it did not mention them specifically.

Senate standing orders (observed by joint committees) have provisions which allow Senators to refer to in camera evidence or unpublished committee documents in a dissenting report, to the extent necessary to support the reasoning of the dissent, in cases when a committee has not reached agreement on the disclosure of the evidence or documents for that purpose.¹⁶⁵

Disclosure of in camera evidence after 30 years

Pursuant to a resolution of the House on the disclosure of evidence (*see page 722*), the Speaker has the authority to permit access to unpublished in camera evidence after 30 years, subject to certain conditions; the Speaker and the President of the Senate have similar authority in respect of joint committees.

Resolution on disclosure of in camera evidence

The Standing Committee on Procedure reviewed the question of the disclosure of in camera evidence in 1991 and concluded that a rigorous mechanism should be put in place to ensure that in camera evidence could only be disclosed in the most outstanding circumstances.¹⁶⁶ The committee repeated this recommendation when it reviewed the committee system in 1998.¹⁶⁷ As a result of the committee's recommendations the House agreed to a resolution on the disclosure of in camera evidence on 3 December 1998. The resolution was introduced as a trial, effective initially for a year and later extended to the end of the session. The resolution was not renewed in later Parliaments.

The resolution applied the following conditions to the disclosure of evidence taken in private by a committee of the House:

- (a) Committees may take evidence in the following manner:
 - (i) By written submissions, whether in hard copy or electronic form;
 - (ii) By oral evidence taken in public; and
 - (iii) In private session.
- (b) A committee may, on its own initiative or at the request of, or on behalf of, a witness or organisation, hear evidence in private session. A witness shall be informed that it is within the power of the committee and the House to disclose all or part of the evidence subsequently. Publication of evidence would be the prerogative of the committee and it would only be disclosed if the majority of the committee so decided by resolution.
- (c) Where a committee has agreed to take evidence in camera, and has given an undertaking to a witness that his or her evidence will not be disclosed, such evidence will not be disclosed by the committee or any other person, including the witness. With the written agreement of the witness, the committee may release such evidence in whole or in part.
- (d) Where a Member of the House of Representatives discloses in camera evidence other than as prescribed, the House may impose a penalty on the Member following investigation and report of the matter by the Committee of Privileges.
- (e) Evidence taken in camera which discloses a serious crime may, in respect to that part, be conveyed to the Speaker for appropriate action by the Chair, with the committee's approval.

¹⁶⁵ Senate S.O. 37(2).

¹⁶⁶ Standing Committee on Procedure, *Disclosure of in camera evidence*, November 1991, PP 295 (1991).

¹⁶⁷ Standing Committee on Procedure, *Ten years on: a review of the House of Representatives committee system*, May 1998, PP 91 (1998) 32–3.

- (f) No person not being an officer of the committee when the evidence was given will have access to evidence taken in camera, unless authorised by the full committee.
- (g) If a motion is to be moved in the House to release evidence taken in camera by one of its committees, notice must be given. Such notice will not be placed on the Notice Paper without the approval of the Speaker, who must consult the Attorney-General, the Chair of the relevant committee, the Prime Minister and the Leader of the Opposition and report the outcome of that consultation to the House.¹⁶⁸

Documents treated in confidence

The principles applying to requests for hearing evidence in private apply equally to requests for non-publication of documents. Section 13 of the Parliamentary Privileges Act applies to documents prepared for the purpose of submission, and submitted, to a committee and directed to be treated as evidence taken in private.

A request by a witness that evidence given remain in confidence is often granted but on occasions a committee may consider that the public interest outweighs the private interest of the witness and choose not to accede to the request. In 1975 the Select Committee on Road Safety refused to accept documentary evidence from a witness on a confidential basis, insisting that it was in the public interest that the evidence be published. After protracted negotiations the evidence was provided and was published in the committee's report.¹⁶⁹

In practice, it is rare for committees to publish confidential evidence against the objections of a witness where the evidence has been taken in-confidence. If a committee is considering this course of action it would need to comply with the following provision:

Before giving any evidence in camera a witness shall be informed whether it is the intention of the committee to publish or present to the House all or part of that evidence, that it is within the power of the committee to do so, and that the House has the authority to order the production and publication of undisclosed evidence. Should the committee decide to publish or present to the House all or part of the evidence taken in camera, the witness shall be advised in advance.¹⁷⁰

The committee in complying with this procedure should advise the witness if it intends to publish undisclosed evidence. The witness may then provide additional reasons why the evidence should not be disclosed and the committee may consider these views before proceeding. The committee would consider whether the public interest outweighs the witness's claims of confidentiality. In negotiating the publication of evidence, the committee could agree with the witness to publish extracts of the evidence with sensitive material removed. If a committee were to demonstrate a pattern of publishing undisclosed evidence against the advice of witnesses, it could run the risk in future inquiries of witnesses being reluctant to give evidence in camera or to provide confidential submissions.

Steps are taken to retrieve confidential documents from members of committees of previous Parliaments and from members of any committees which cease to exist, or requests are made that the documents be destroyed. Similar action is taken when a Member ceases to be a member of a committee or a Member of the House. After the House is dissolved former committee members are not given access to such documents, unless they have been authorised for publication.

¹⁶⁸ VP 1998–2001/159–60 (3.12.1998).

¹⁶⁹ PP 156 (1976).

¹⁷⁰ *Procedures for dealing with witnesses*, Resolution of 13 November 2013, paragraph 7.

Access to old evidence and documents

Pursuant to a resolution of the House, the Speaker may permit any person to examine and copy evidence submitted to, or documents of, committees, which are in the custody of the House, which have not already been published by the House or its committees and which have been in the custody of the House for at least 10 years. However, if such evidence or documents were taken in camera or submitted on a confidential or restricted basis, disclosure shall not take place unless the evidence or documents have been in the custody of the House for at least 30 years, and, in the opinion of the Speaker, it is appropriate that such evidence or documents be disclosed. The Speaker must report to the House the nature of any evidence or documents made available under the resolution and the persons to whom they have been made available. Subject to the same conditions, the Speaker and the President of the Senate have been authorised to release records of joint committees. Any such release must be reported to both Houses.¹⁷¹ This procedure applies to documents which have not been made public.

In 2000 the House agreed to a resolution in relation to in camera evidence of the Privileges Committee, making specific provision for release after 30 years.¹⁷²

The time periods specified in the above resolutions do not prevent the House from authorising (by separate resolution) the publication of any document or evidence in its possession. In 2008 the House resolved to authorise the President of the HMAS *Sydney* II Commission of Inquiry to access, subject to certain conditions, exhibits held for less than 10 years and confidential submissions received by the Joint Standing Committee on Foreign Affairs, Defence and Trade during its 1999 inquiry into the loss of HMAS *Sydney*.¹⁷³

Unusual secrecy provisions

For considerations of national security unusual secrecy provisions were applied to the Joint Committee on Foreign Affairs when it was appointed in 1952. The committee's resolution of appointment required that it sit in camera, that its proceedings be secret, and that it report only to the Minister for External Affairs.¹⁷⁴ Whenever it reported to the Minister the committee was to inform the Parliament that it had reported. The Minister decided whether or not the reports should be tabled in the Parliament and printed. These restrictions were modified and ultimately removed from the resolutions of appointment of the committee's successors in subsequent Parliaments. Because of these restrictions and other limitations imposed on the committee, the Opposition refused until 1967 to nominate members to the committee.¹⁷⁵

Schedule 1 of the *Intelligence Services Act 2001* places restrictions on the disclosure to Parliament of certain matters. In a report to a House the Joint Committee on Intelligence and Security must not disclose the identity of a person who is or has been a staff member or an agent of certain intelligence agencies; or any information from which the identity of such a person could reasonably be inferred. In addition the committee must not, in a report to either House, disclose operationally sensitive information or information that would or might prejudice Australia's national security or the conduct of Australia's foreign relations; or the performance by an agency of its functions. The

171 Resolution of 11 October 1984, (reproduced as an addendum to the Standing Orders). E.g. VP 1993–96/2027 (9.5.1995); J 1993–96/2942–3 (27.2.1995).

172 VP 1998–2001/2021 (7.12.2000), see Ch. on 'Parliamentary privilege'.

173 VP 2008–10/423–4 (24.6.2008).

174 VP 1951–53/129 (17.10.1951).

175 Joint Committee on Foreign Affairs and Defence, *Observations and history of the committee*, PP 4 (1978) ii.

committee is required, before presenting a report to either House, to obtain advice of the responsible Minister or Ministers concerned as to whether the disclosure of any part of the report would or might disclose such a matter.

Unauthorised disclosure or publication of evidence

Subject to section 4 of the Parliamentary Privileges Act, it may be regarded as a contempt for any person, including the originator, to publish or disclose oral or documentary evidence received by a committee before the evidence has been reported to the House or its publication has been authorised by the committee or the House.¹⁷⁶ The restriction on publication of a document, including a submission, applies once the document comes into the committee's possession—that is, when it is received by the committee, or by the secretary of the committee. In addition, section 13 of the Parliamentary Privileges Act enables substantial penalties to be imposed for the publication or disclosure of documents directed by a committee to be treated as evidence taken in camera or oral evidence taken in camera or a report of such oral evidence.

Committees exercise discretion in dealing with breaches of these provisions, and it has not been common for cases of unauthorised publication of evidence to be reported to the House.¹⁷⁷ However, committees have at times deemed it necessary to stress to those concerned the seriousness of their action. A complaint is more likely to be made if the disclosure is seen as particularly damaging or as indicating possible impropriety of some kind. For the processes followed in raising such a matter as a contempt *see* Chapter on 'Parliamentary privilege'.

An instance of the discretion used by committees arose in 1975. A subcommittee of the Standing Committee on Environment and Conservation acceded to a request by two witnesses that their evidence be taken in camera because of their fears of physical harm from persons whom they wished to name in their evidence. One of the witnesses subsequently disclosed the transcript of evidence to a journalist who published parts of it. The other witness, who had not been consulted on disclosure of the evidence, informed the committee that publication of the evidence may have placed him in jeopardy. The Speaker was informed of the circumstances and advice was sought. The Australian Federal Police were asked to investigate the possible need for the witnesses to be given protection, but this was found to be unnecessary. The Speaker advised against the incident being raised as a matter of privilege because of concern that further publicity might lead to a greater risk of harm to the witnesses. The Speaker wrote to the witness who had disclosed the evidence and to the editor of the newspaper which had published it. The Speaker stressed the seriousness of the disclosure, indicated that under normal circumstances the incident may have been raised as a matter of privilege, and stated why no further action had been taken.

It is standard practice for an acknowledgment of receipt of a submission by the committee secretary to give advice to the effect that submissions should not be published or disclosed unless or until such time as the committee has authorised their publication. From time to time publication has preceded receipt of this warning.¹⁷⁸

If witnesses are examined in public, but publication of the evidence is not authorised, no objection is usually taken to the publication by the press of evidence taken at the

176 Copies of such documents held by government departments are effectively exempt documents under the *Freedom of Information Act 1982*, s. 46(c).

177 *And see* Appendix 25.

178 *And see* fourth edition p. 664.

hearing, provided the reports are fair and accurate. Because it is now standard practice for committees, at the end of each public hearing, to authorise publication of all evidence taken, except confidential documents, this qualification of the non-disclosure provisions now has less relevance. However, it should be noted that additional documents or submissions received during a hearing may not be authorised until later examined.

Expunging of material from evidence

Part or all of the evidence given by a witness, or questions or statements by committee members, has been expunged from the transcript of evidence and an order made that any such material expunged be disregarded by the press. Advice on this matter to the Joint Committee on Pecuniary Interests of Members of Parliament relied on the provisions of the standing orders of each House, subsection 2(2) of the *Parliamentary Papers Act 1908*, *May* and *Odgers*.¹⁷⁹ Instances cited of evidence which might be expunged included unfair allegations, use of improper language and hearsay. The advice noted that in all cases the references were to the authority of the committee and not of the chair and therefore recommended that any direction that material be struck out and be disregarded by the press be by order of the committee.¹⁸⁰

In its report on procedures for dealing with witnesses in 1989,¹⁸¹ the Procedure Committee recognised the difficulties that could be encountered in respect of orders for material to be expunged if, for example, the act of publication occurred prior to or in ignorance of an order that it be expunged. It considered that it would be better practice for committees to consider the evidence being given and that, where it was felt that the evidence was of such a nature that immediate publication would not be appropriate, a committee should give consideration to taking further evidence in private.

Witnesses have sometimes requested that material be expunged from the evidence they have given after it has been published, or that the committee revoke its authorisation for publication. Since evidence has been published on the internet the practical difficulty of removing material in this way has considerably increased. Since the committee can have no knowledge of who may have accessed or made copies of the evidence, removing it from the web site may not be fully effective, especially if such a request is made several years after the original publication.¹⁸²

See also ‘Partial publication’ at page 718.

REPORTS

Frequency of reporting

The frequency with which a committee may report is determined by standing or sessional orders or its resolution of appointment. Standing committees are authorised to report from time to time—that is, as the need arises. Select committees have had various limits placed on their power to report but they are usually required to report by a specified date or as soon as possible, in which case they may submit only one report (whereupon they cease to exist).

¹⁷⁹ The published authorities at the time—the first edition of *House of Representatives Practice* was published five years later.

¹⁸⁰ Then S.O. 340 and Senate S.O. 308; *May*, 19th edn, p. 650; *Odgers*, 5th edn, p. 503. Current relevant references are S.O. 242; Senate S.O. 37; *Odgers*, 14th edn, p. 554; *May*, 24th edn, pp. 825–7; *see also* Senate privilege resolution 1 (12).

¹⁸¹ *Committee procedures for dealing with witnesses*, PP 100 (1989).

¹⁸² Even if a submission is removed from a committee’s website it may remain publicly available via search engine caches or internet archives.

A committee without the power to report from time to time may, however, seek leave of the House to submit an ‘interim’ or ‘special’ report. A special report is one in which a committee draws attention to matters incidental to its inquiry and which relates to its powers, functions or proceedings. For example, the Committee of Privileges has submitted special reports seeking an extension of its reference¹⁸³ and recommending that the House ask the Senate to grant leave to named Senators to appear before it.¹⁸⁴ In 1976 the Joint Committee on the Parliamentary Committee System presented a special report seeking an amendment to its powers to elect a chair and deputy chair.¹⁸⁵ The Joint Committee of Public Accounts has reported on the issue of whether it was able to sit while the Senate was sitting,¹⁸⁶ and in 1988 it reported on revised procedures for its reports.¹⁸⁷

Instead of presenting a single report on a wide-ranging inquiry, a committee, properly authorised, may submit one or more interim reports. Such reports may deal with the committee’s method of inquiry, or report progress on the inquiry as a whole and/or contain the committee’s recommendations on facets of the inquiry.¹⁸⁸

The Senate has referred matters to committees for report on a specified date, or not before a specified date. The Clerk of the Senate has advised that such a reference cannot negate the power explicitly conferred by Senate standing orders for committees to report when they choose to.¹⁸⁹

From time to time committees have reported to the House without a formal inquiry reference or without following the normal procedures of inviting submissions and conducting public hearings. Circumstances in which committees have decided to report without following the normal inquiry processes have included situations:

- when a need to report quickly had been identified;
- where a committee wished to comment on aspects of the Government’s response to previous reports;
- where the issues were felt to have little public interest;
- where costs and other resource limitations had prevented a full inquiry;
- where extensive published material, letters and other documents were available; and
- where a report naturally flowed from informal briefings, seminars, round-table discussions or inspections.

This practice provides a cost and time-effective way for a committee’s views to be placed before the Parliament, but should be used with care, as the committee could leave itself open to criticism that some community, government or interest groups have been excluded from the process. In addition the committee runs the risk that its conclusions and recommendations could be based on incomplete or incorrect information.

183 VP 1954–55/225–6 (26.5.1955), 239 (31.5.1955).

184 VP 1985–87/1361 (26.11.1986); H.R. Deb. (26.11.1986) 3778.

185 VP 1976–77/119 (6.4.1976).

186 Reports 264 and 292 of the Joint Committee of Public Accounts, PP 75 (1987) and PP 317 (1988).

187 Report 291 of the Joint Committee of Public Accounts, PP 146 (1988).

188 E.g. House of Representatives Standing Committee on Aboriginal Affairs, *Effectiveness of support services for Aboriginal and Torres Strait Island communities: Interim report*, PP 197 (1988). Standing Committee on Communications, Information Technology and the Arts—*Community television: Options for digital broadcasting, First report of the inquiry into community broadcasting*, PP 30 (2007); and *Tuning in to community broadcasting, Second report of the inquiry into community broadcasting*, PP 125 (2007).

189 That is, report from time to time pursuant to Senate S.O. 25(18).

Some committees have presented annual reports.¹⁹⁰ The annual report of the Department of the House of Representatives also contains some information on committees serviced by the department.

Drafting and consideration of reports

Technically, it is the duty of the chair of a committee to prepare a draft report.¹⁹¹ In order to pave the way for the preparation of a report after evidence has been received and reviewed, it is normal for members to discuss possible conclusions and recommendations at deliberative meetings. This process is normally assisted by advice and documentation from committee staff. In light of such discussions secretariats are able to develop draft report material for consideration, in the first instance, by the chair. A member other than the chair may give a draft report to the committee. In this case the committee must first decide which report it will consider.¹⁹²

The procedures for consideration of a draft report are set down in standing order 244:

- (a) The Chair of a committee shall prepare a draft report and present it to the committee at a meeting convened for report consideration.
- (b) The report may be considered at once if copies have been circulated in advance to each member of the committee. The report shall be considered paragraph by paragraph. When consideration of the chapters of the report is completed, the appendices shall be considered in order.
- (c) After the draft report has been considered, the whole or any paragraph may be reconsidered and amended.
- (d) A member objecting to any portion of the report may vote against it or move an amendment when the particular paragraph or appendix is under consideration.
- (e) A member protesting about the report or dissenting from all or part of it may add a protest or dissenting report to the main report.

The committee may consider groups of paragraphs together, by leave. Amendments may be proposed by any member and are determined in the same way as amendments to a bill during the consideration in detail stage in the House. The committee may divide on any question. When all paragraphs and appendixes have been agreed to, with or without amendment, the question is proposed ‘That the draft report (as amended) be adopted’. The date which appears under the chair’s signature in the report and on the front page is the date on which the report was adopted.

The procedures for the drafting, consideration, adoption, presentation and correction of inquiry reports apply equally to all committee reports, including special and interim reports.

Protest or dissent

Committee members may add a protest or dissenting report to a committee’s report.¹⁹³ The difference between a ‘protest’ and a ‘dissenting report’ has not been strictly defined. A distinction would be to associate a protest with procedural matters concerning the conduct of an inquiry, and dissent with opposition to a committee’s conclusions or recommendations—however, in practice the term ‘dissenting report’ is generally used. A protest (which is a rarely used form) or dissenting report is attached to

190 E.g. VP 2013–16/1619–20 (12.10.2015) (Intelligence and Security); VP 2013–16/1543 (7.9.2015) (Public Accounts and Audit); VP 2013–16/2000 (16.3.2016) (Public Works). In these cases the annual report is a statutory requirement, but other committees have also presented one, e.g. VP 2013–16/67 (3.5.2016) (Parliamentary Joint Committee on Human Rights).

191 S.O. 244(a).

192 S.O. 245.

193 S.O. 244(e). Dissenting members have included committee chairs—see *Report of the Joint Select Committee on an Australia Card*, 1986. The chair (a Senator), and two House members dissented; Standing Committee on Health, Aged Care and Sport, *Report on the inquiry into the use and marketing of electronic cigarettes and personal vaporisers in Australia*, March 2018. The chair co-authored a dissenting report.

the committee's report, and signed by the dissenting or protesting members.¹⁹⁴ Additions to reports expressing disagreement or reservation have also been described in other ways, for example, as 'additional comments',¹⁹⁵ 'clarifying statement',¹⁹⁶ 'minority report',¹⁹⁷ and 'supplementary remarks'.¹⁹⁸

A member who proposes to present a protest or dissenting report is not required to seek authorisation from the committee, as this power resides with individual members, not with the committee. Accordingly, the protest or dissenting report need not be shown by its author to the chair or other members of the committee, although not to do so would be regarded as a discourtesy. On 22 November 1995 the Senate passed a motion to the effect that prior to the printing of a committee report a member or a group of members is not required to disclose to the committee any minority or dissenting report, or any relevant conclusions and recommendations, proposed to be added or attached to the report after it had been agreed.¹⁹⁹ This has not been considered to preclude action by a committee to direct the circulation of dissenting reports to committee members on their receipt by the secretariat. The chair's foreword, which is not subject to approval by the committee, has contained a rebuttal of claims in a dissenting report.²⁰⁰

A protest or dissenting report must be relevant to the committee's reference, as the authority delegated to the committee and its members is limited to those areas defined by the terms of the inquiry. The words 'protest' and 'dissent' imply some relationship with the committee's report.

Alternative methods of recording dissent are:

- moving amendments to the draft report, the voting on which is recorded in the minutes which are subsequently presented and thereby become public;²⁰¹
- submitting an alternative draft report to the committee (S.O. 245);
- making a statement in the House, by leave, when the report is presented; or
- stating the dissent or protest in debate on any motion moved in relation to the report.

(For earlier precedents *see* pages 612–3 of the second edition.)

In extreme circumstances members may record their dissent by resigning from the committee. In such instances members have no automatic right to explain their resignation in the House but could do so in a statement made by leave,²⁰² or during 90 second statements, the adjournment debate or the grievance debate.

If a committee is unable to agree upon a report, it may present a special report to that effect, with its minutes and the transcript of evidence.²⁰³ Even if the circumstances of the committee's inability to agree are widely known, the committee should still report the circumstances to the House, if only as a matter of form and to place them on record.

See also 'Disclosure of in camera evidence in dissenting reports' at page 720.

194 E.g. PP 264 (1977) 71–2; in this instance one member added, separately, a protest *and* a dissent.

195 E.g. VP 2002–04/1297 (5.11.2003); VP 2004–07/1964 (18.6.2007).

196 H.R. Deb. (12.2.2007) 153–4.

197 VP 2008–10/1243 (18.8.2009).

198 VP 2010–13/1946 (1.11.2012).

199 J 1993–96/4198 (22.11.1995).

200 Standing Committee on Family and Human Services, *Balancing work and family*, PP 434 (2006).

201 S.O.s 244(d), 247(a). Members of the Select Committee on Pharmaceutical Benefits had no power to add a protest or dissent to the committee's report. Their dissent was shown in the minutes, printed as part of the report, PP 73 (1972) 95–147.

202 E.g. H.R. Deb. (11.8.2004) 32768–71.

203 There are no cases of this occurring. *And see May*, 24th edn, p. 833.

Presentation of reports

A copy of the report, signed by the chair, dissenting reports, if any, signed by the relevant members, and the committee's minutes of proceedings are presented to the House by the chair or a member of the committee.²⁰⁴ Copies of the submissions to the inquiry and the corrected copy of the transcript of evidence, other than confidential evidence, may also be presented. A supplementary CD has been presented with a report,²⁰⁵ and a video explaining a committee's report has been presented.²⁰⁶ It is normal practice for the report, with or without the accompanying documents, to be made a Parliamentary Paper.²⁰⁷

Periods are reserved on Mondays in the House and the Federation Chamber for private Members' business and parliamentary committee and delegation business, which includes presentation of reports and statements relating to inquiries—special procedures applying to these periods are described in detail in the Chapter on 'Non-government business'. Reports can also be presented at any time when other business is not before the House.²⁰⁸

A Member presenting a committee report at times other than the period allocated on Monday may be granted leave to make a brief statement on the report and this may be followed by statements, by leave, from other Members. The Member presenting the report may then move a specific motion in relation to the report—that is, that the House take note of the report, or that the report be adopted or agreed to. Normally the 'take note' motion is moved. Debate on the motion is then adjourned to a future day.²⁰⁹ Debate can be resumed in the House or, after referral by the House, in the Federation Chamber.

Generally, any subsequent debate on a motion to take note of a committee report is adjourned and the order of the day remains listed as House or Federation Chamber business on the Notice Paper, thus enabling further debate. If not called on for eight consecutive sitting weeks the order of the day is automatically removed from the Notice Paper.²¹⁰

Two reports have been presented together, with the single motion moved to take note of each of the reports giving rise to two separate orders of the day (later debated together in a *de facto* cognate debate).²¹¹

In 1955 the House ordered that the Clerk read to the House the special report of the Committee of Privileges relating to the *Bankstown Observer Case*.²¹²

See also 'Authority for release when House not sitting' at page 731.

Oral reports

If, having considered a bill referred to it for an advisory report, a committee finds no issues requiring a formal report, a statement to the House by the Chair or Deputy Chair

204 S.O.s 246, 247(a). When minutes have not been available at the time of tabling, they have been presented, by leave, on a later day, e.g. VP 2002–04/1441 (18.2.2004).

205 VP 2004–07/1349 (4.9.2006).

206 VP 1998–2001/853 (20.9.1999).

207 S.O.s 39(e), 247(b).

208 S.O. 39.

209 S.O. 39(d).

210 S.O. 42.

211 VP 2002–04/1431 (16.2.2004), 1455 (19.2.2004), H.R. Deb. (19.2.2004) 25340–49.

212 VP 1954–55/225 (26.5.1955).

to that effect, together with the presentation of the relevant minutes of proceedings, discharges the committee's obligation to report on the bill.²¹³

A committee's chair or deputy chair (either or both) may make an oral statement to inform the House of matters relating to an inquiry.²¹⁴ To enable debate a motion to take note may be moved in respect of a presented copy of the statement.

An oral statement is made annually by the chair of the Joint Committee of Public Accounts and Audit on the draft budget estimates for the Australian National Audit Office and the Parliamentary Budget Office.²¹⁵

Presentation of reports and minutes—joint committees

The standing orders provide that the proceedings of a joint committee shall be reported to the House by one of the Members it has appointed to serve on the committee.²¹⁶ The provision of the Senate standing orders is similar except that one of the Senators appointed to the committee is required to report.²¹⁷ Reports by joint committees are dealt with in the same manner as the reports of House or Senate committees except that joint committee reports are directed to, and presented in, both Houses. Senate standing orders do not require the presentation of minutes of proceedings with a committee's report.²¹⁸

Committees usually aim to present reports to both Houses on the same day but this is not always possible—for example, when only one House is sitting and there is an urgent need for the report to be presented and published.²¹⁹ A motion that the report be made a Parliamentary Paper (or be printed) need only be moved in one House. Special arrangements are provided if the House is not sitting when a joint committee has completed a report of an inquiry—see page 731.

Amendment of presented reports

Minor amendments to presented copies of committee reports (for example, to correct typographical errors) may be made with the approval of the Clerk of the House. Amendments are initialled by the committee secretary. The committee chair, or even the whole committee, would have to approve more substantial, even if still relatively technical, amendments. In the case of amendments of substance a corrigendum²²⁰ or a further report²²¹ would have to be presented. Leave is not required for these purposes.²²² Alternatively, the chair could make a statement in the House.

Premature disclosure or publication

Standing order 242 provides that a committee's or subcommittee's evidence, documents, proceedings and reports may not be disclosed or published to a person (other

213 S.O. 143(c). Such a statement means that the committee has reported for the purposes of standing order 148, enabling proceedings on the bill to continue. However, the statement is not considered to be a 'report' for the purposes of standing order 39 and the copy presented is not made a parliamentary paper.

214 S.O. 39(a).

215 E.g. VP 2013–16/68 (3.5.2016).

216 S.O. 226.

217 Senate S.O. 42.

218 Although when they are available a more complete understanding of the Senate committee process is possible, e.g. PP 449 (1993) 225–7, 271–3.

219 E.g. Joint Committee on Prices, *Prices of household soaps and detergents*, PP 326 (1974), tabled in the Senate and ordered to be printed on 15 August 1974, J 1974–75/155 (15.8.1974); tabled in the House on 19 September 1974, VP 1974–75/177 (19.9.1974).

220 E.g. VP 1985–87/989 (27.5.1986); VP 2013–16/1057 (4.12.2014).

221 VP 1980–83/1220 (10.11.1982).

222 E.g. VP 2008–10/1275 (7.9.2009).

than a member of the committee or parliamentary employee assigned to the committee) unless they have been reported to the House or their publication has been authorised by the House, the committee or the subcommittee. This is a blanket prohibition which precludes unauthorised disclosure of all or part of a report, or of its contents.

Until 1998 the rule was that such disclosure or publication had to be authorised by the House.²²³ The present rule allows authorisation to be given by a committee or subcommittee, and in addition, specifically permits committees to resolve to:

- publish press releases, discussion papers or other documents or preliminary findings;
- divulge evidence, documents, proceedings or reports on a confidential basis to persons for comment; or
- authorise a member of the committee to give public briefings on matters related to an inquiry. An authorised member may not disclose evidence, documents, proceedings or reports which have not been authorised for publication. The committee shall determine the limits of the authorisation.

Contravention of the rule on premature disclosure may be found to be a contempt.²²⁴ However, committees have chosen, from time to time, to take no action on unauthorised press articles partially disclosing the contents of their reports or commenting on committee deliberations during the drafting of reports; it has sometimes been thought counter-productive to give further publicity and credence to such articles.²²⁵

Release to media under embargo

In accordance with the provisions outlined above, a number of committees have adopted the practice of releasing their reports, before presentation, to the media under embargo. This early release gives the media advance information about a committee's recommendations and enables more effective questioning of the committee at press conferences held after presentation. The practice also encourages greater media coverage of committee reports. Release under embargo is authorised by resolution of the committee.

Release to Minister

On rare occasions a committee has been authorised or directed to disclose its report to Ministers before its presentation to the House. The resolution of appointment of the Joint Committee on War Expenditure provided that:

The Committee have power, in cases where considerations of National Security preclude the publication of any recommendations and of the arguments on which they are based, or both, to address a memorandum to the Prime Minister for the consideration of the War Cabinet, but, on every occasion when the Committee exercises this power, the Committee shall report to the Parliament accordingly.²²⁶

In 1952 the Joint Committee on Foreign Affairs was directed by its resolution of appointment to forward its reports to the Minister for External Affairs. On every occasion when it did so, the committee was required to inform the Parliament that it had

223 Former S.O. 340.

224 PP 135 (1987). *Parliamentary Privileges Act 1987*, s. 13 deals with in camera evidence, see Ch. on 'Parliamentary privilege'.

225 VP 1985–87/899 (1.5.1986); H.R. Deb. (1.5.1986) 2890—statement by deputy chair of the Joint Select Committee on an Australia Card; H.R. Deb. (20.10.1986), 2331–2—personal explanation by a committee member regarding a newspaper report of the member's dissenting report (presented 25.11.1986).

226 VP 1940–43/157–8, 161 (3.7.1941). In 1955 attempts were made to have one of the committee's reports and related documents published. The report concerned allegations of fraudulent practices during the years of World War II. The Prime Minister having first agreed to table the report later declined to do so on the grounds of justice to the individuals concerned, VP 1954–55/293–4 (6.9.1955), 301 (13.9.1955); H.R. Deb. (6.9.1955) 360–75; H.R. Deb. (13.9.1955) 572–6.

reported.²²⁷ In later Parliaments the committee's resolution of appointment added that, in the case of inquiries not initiated by the Minister, the committee was not authorised to report, either to the Minister or to the Parliament, without the Minister's consent. It was further provided that, if opposition Members were represented on the committee, copies of its reports to the Minister were to be forwarded to the Leader of the Opposition for his confidential information.²²⁸ It was left to the Minister to decide whether or not the committee's reports would be published.²²⁹ These arrangements were justified on the ground of national security.

The *Intelligence Services Act 2001* provides that the Joint Committee on Intelligence and Security is not permitted to present a report until the advice of the responsible Minister or Ministers has been obtained as to whether the disclosure of any part of the report would or might disclose certain matters which the committee is not permitted to disclose.²³⁰

Authority for release when House not sitting

Special arrangements are required for times when the House is not sitting and a committee has completed a report of an inquiry. The committee may send the report to the Speaker, or to the Deputy Speaker if the Speaker is unavailable. When the Speaker or the Deputy Speaker receives the report, the report may be published; and he or she may give directions for the printing and circulation of the report. The committee must then present the report to the House as soon as possible.²³¹ This procedure would normally be used only during a lengthy break when the House is not due to sit for some time, or in cases where the committee has a reporting deadline which falls on a non-sitting day.²³² It has also been used for reports sent to the Speaker before dissolution, but not able to be presented until the new Parliament had met.²³³ These provisions also apply to joint committees.²³⁴

Government responses to reports

The Government is obliged by resolution of the House to present its response to recommendations contained in a report by a House or Joint Committee within six months of the report's presentation. If a response has not been presented within this period, the relevant Minister (or Minister representing the Minister) must present a signed statement stating the reasons for the delay, and must make him or herself available to the committee concerned to be questioned about the statement. If an explanatory statement has not been presented, and if questions on the statement have not been answered to the satisfaction of the committee, the committee may bring the matter to the attention, if appropriate, of the Auditor-General for assistance in resolving matters

227 VP 1951–53/129 (17.10.1951).

228 VP 1954–55/94–5 (12.10.1954).

229 The Minister tabled the committee's first report on 11 September 1952; VP 1951–53/417 (11.9.1952).

230 Sometimes the committee has presented an abridged version of a report provided to the Minister.

231 S.O. 247(c). In the absence of both the Speaker and the Deputy Speaker, the Second Deputy Speaker has given the direction.

232 The first two examples were: a report of the Standing Committee on Communications, Transport and the Arts released in Melbourne on 11 May 2001 following the centenary sittings, H.R. Deb. (4.6.2001) 27116; and a report of the Standing Committee on Family and Community Affairs released on 29 December 2003 (the committee had a reporting deadline of 31 December), VP 2002–04/1406 (10.2.2004).

233 VP 2004–07/21 (17.11.2004).

234 S.O. 226(b). Senate S.O. 38(7) has equivalent provisions.

referred to in the report or to the Speaker for assistance in resolving the response process.²³⁵

There are government guidelines for departments and agencies on the procedures to follow in relation to the approval and presentation of responses.²³⁶ These procedures do not apply to reports by the Parliamentary Standing Committee on Public Works and the Joint Committee of Public Accounts and Audit,²³⁷ and to advisory reports on proposed legislation.²³⁸ Government responses are made to reports by the Joint Committee on Publications resulting from inquiries, and reports by the Procedure Committee, but not to reports by other committees concerned with ‘internal’ matters. If appropriate, the Speaker may also respond to a committee report, and both Presiding Officers may respond to reports by joint committees which relate to their shared responsibilities.²³⁹

Speakers have followed the practice of presenting to the House at approximately six-monthly intervals a schedule listing government responses to House of Representatives and joint committee reports as well as responses outstanding.²⁴⁰ Subsequently the Leader of the House presents a list of parliamentary committee reports showing the stage reached with the government response in each case.²⁴¹ This list does not constitute the formal response, nor does correspondence from a Minister directly to a committee chair. The Government’s response to a committee report is considered to have been formally made only when presented directly to the House(s).

The first Notice Paper of each sitting period (fortnight or single week) contains a list of House and joint committee reports awaiting government response.

235 Resolution of 29 September 2010, VP 2010–13/44 (29.9.2010). Governments had followed a practice of responding formally to committee reports since 1978, H.R. Deb. (25.5.1978) 2465–6. While the original commitment was to respond within six months, in 1983 this period was reduced to three months, S. Deb. (24.8.1983) 141–2.

236 *Guidelines for the presentation of documents to the Parliament (including government documents, government responses to committee reports, ministerial statements, annual reports and other instruments)*, Department of the Prime Minister and Cabinet, February 2017, pp. 8–11.

237 Responses to PAAC recommendations on administrative matters are made by Executive Minute. The general approval and tabling process of the guidelines do apply in the case of responses to PAAC policy recommendations.

238 Responses are generally made during debate on the bill or by the moving of government amendments.

239 E.g. VP 1978–80/1237 (22.11.1979); VP 2002–04/1577 (1.4.2004); VP 2010–13/260 (25.11.2010).

240 E.g. VP 1993–96/2687 (30.11.1995); VP 1996–98/95 (9.5.1996); VP 1998–2001/1156 (9.12.1999); VP 2010–13/261 (25.11.2010); VP 2013–16/90 (5.5.2016).

241 E.g. VP 1993–96/1683 (8.12.1994); VP 1996–98/340 (27.6.1996); VP 1998–2001/1596 (28.6.2000); VP 2010–13/242 (24.11.2010); VP 2013–16/1795 (2.12.2015).