



## Procedural fairness for inquiry participants

The Legislative Council has adopted the following rules to provide proper process and fair treatment for inquiry participants.

### 1. Inviting and summoning witnesses

A witness will be invited to give evidence at a hearing unless the committee decides that a summons is warranted.

### 2. Information for witnesses

A witness will normally be given reasonable notice of their hearing and will be provided with the inquiry terms of reference, a list of committee members and a copy of these procedures.

### 3. Opportunity to make a submission before a hearing

A witness will normally be given the opportunity to make a submission before their hearing.

### 4. Opportunity to request a private (*in camera*) hearing

A witness may request, before or during their hearing, that some or all of their evidence be heard in private (*in camera*). The committee will consider this request and if it declines, will advise the witness of the reasons why.

### 5. Publication of evidence taken in private (*in camera*)

Prior to their private (*in camera*) hearing, a witness will be informed that the committee and the Legislative Council have the power to publish some or all of the evidence given. If the committee intends to publish, it will normally consult the witness, advise them of the outcome, and give reasonable notice of when the evidence will be published.

### 6. Attendance with a legal adviser

With the prior agreement of the committee, a witness may be accompanied by and have reasonable opportunity to consult a legal adviser during their hearing. The legal adviser cannot participate in the hearing and will not be sworn in or give evidence, unless the committee decides otherwise.

## **7. Attendance with a support person**

With the prior agreement of the committee, a witness may be accompanied at their hearing by a support person. The support person will not be sworn in or give evidence, unless the committee decides otherwise.

## **8. Witnesses to be sworn**

At the start of their hearing a witness will, unless the committee decides otherwise, take an oath or affirmation to tell the truth, and the provisions of the *Parliamentary Evidence Act 1901* will then apply.

## **9. Chair to ensure relevance of questions**

A committee chair will ensure that all questions put to witnesses are relevant to the inquiry.

## **10. Questions to public officials**

Public officials will not be asked to give opinions on matters of policy, and will be given reasonable opportunity to refer questions to more senior officials or to a minister.

## **11. Questions on notice**

A witness may request to take a question on notice and provide the answer in writing at a later date to be determined by the committee.

## **12. Objections to answering questions**

Where a witness objects to answering a question, they will be invited to state the grounds for their objection. If a member seeks to press the question, the committee will consider whether to insist on an answer, having regard to the grounds for the objection, the relevance of the question to the inquiry terms of reference, and the necessity to the inquiry of the information sought. If the committee decides that it requires an answer, it will inform the witness of the reasons why and may consider allowing the witness to answer the question on notice or in private (*in camera*).

### **Witness appearing by invitation**

- (a) If a witness who appears by invitation continues to refuse to answer the question, the committee may consider summoning the witness to reappear later, and will advise the witness that as they will be under oath and so subject to section 11 of the *Parliamentary Evidence Act 1901*, they may be compelled to answer the question.

### **Witness appearing under summons**

- (b) The continued refusal by a witness, having been summoned, to answer the question while under oath, may constitute a contempt of parliament under the *Parliamentary Evidence Act 1901*, and the committee may report the matter to the Legislative Council.

## **13. Evidence that may seriously damage the reputation of a third party**

### **Evidence about to be given**

- (a) Where a committee anticipates that evidence about to be given may seriously damage the reputation of a person or body, the committee may consider hearing the evidence in private (*in camera*).

### **Evidence that has been given**

- (b) Where a witness gives evidence in public that may seriously damage the reputation of a person or body, the committee may consider keeping some or all of the evidence confidential.

## **Opportunity to respond**

- (c) Where a witness gives evidence that may seriously damage the reputation of a person or body, the committee may give the person or body reasonable access to the evidence, and the opportunity to respond in writing or at a hearing.

### **14. Evidence that places a person at risk of serious harm**

Where a witness gives evidence that places a person at risk of serious harm, the committee will immediately consider expunging the information from the transcript of evidence.

### **15. Tendering documents**

A witness may tender documents during their hearing. The committee will decide whether to accept and to publish such documents.

### **16. Inviting and ordering the production of documents**

A witness will be invited to produce documents unless the committee decides that an order to produce the documents is warranted.

### **17. Requests for confidentiality**

A person or body may request that documents provided to a committee be kept confidential in part or in full. The committee will consider the request and if it declines, will advise the person or body of the reasons why, and give reasonable notice of when the documents will be published.

### **18. Transcripts**

A witness will be given the opportunity to correct transcription errors in their transcript of evidence. Amendments to or clarifications of evidence may be requested in writing.

### **19. Treatment of witnesses**

Witnesses will be treated with courtesy at all times.

### **20. Improper treatment of inquiry participants**

Where a committee has reason to believe that a person has been improperly influenced in respect of the evidence they may give to a committee, or has been penalised, injured or threatened in respect of evidence given, the committee will take all reasonable steps to ascertain the facts of the matter. If the committee is satisfied that such action may have occurred, the committee may report the matter to the Legislative Council.

### **21. Inquiry participants before the Privileges Committee**

Where the Privileges Committee inquires into a matter which may involve an allegation of contempt, the committee may adopt additional procedures as it sees fit in order to ensure procedural fairness and the protection of inquiry participants.

## **How can I get further information?**

If you have questions or would like further assistance please contact (02) 9230 3081 or the relevant inquiry secretariat. Contact details are listed on each [inquiry webpage](#). You can also follow the Upper House on Twitter ([@nsw\\_upperhouse](#)) and Facebook ([www.facebook.com/nswupperhouse](#)) for information and alerts about new, ongoing and recently completed inquiries.

