

Chapter 26 Committees

Committees allow both members of Parliament and the public (through submissions and evidence) to play a part in the formulation of public policy. They enable Parliament to more effectively scrutinise the Executive thereby making it more accountable to the people of New South Wales. Ministers and Parliamentary Secretaries do not usually serve on committees appointed by the Parliament and are specifically prohibited from serving on particular committees established by statute.¹

With the increasing scope and complexity of government, Parliaments are using committees more and more to assist them in fulfilling the above functions.

Parliamentary committees in New South Wales:

- oversee specific activities of the Executive in greater detail than the House;
- examine legislative proposals, regulations and the operation of policy in detail;
- link Parliament and the people, providing an authoritative forum where interest groups can put their views on the record;
- provide a Parliamentary link and ultimate accountability for a number of independent statutory officers such as the Auditor-General, the Ombudsman's Office, the Independent Commission Against Corruption et al; and
- are established to report to and better inform the Parliament.

The Legislative Assembly may appoint standing, select, sessional, statutory, legislation, estimates and joint committees. The terms "standing", "select" and "sessional" refer to the duration of the life of a committee. The rules for such committees are set out in chapter 23 of the standing orders.

The proceedings of a duly constituted Parliamentary committee are regarded as proceedings of the Parliament and so attract the protection of parliamentary privilege.²

26.1 Standing committees

A standing committee is appointed to investigate and report on a specific subject area for the life of a parliament (S.O. 315). Whilst they continue to exist until Parliament is dissolved, in the absence of statutory authority, they are generally considered unable to transact business during any prorogation of the Parliament.

The standing committees appointed for the 55th Parliament are:

- Standing Committee on Parliamentary Privilege and Ethics;
- Joint Standing Committee on Electoral Matters;
- Joint Standing Committee on Road Safety;
- Joint Standing Committee on the Office of the Valuer-General;
- Legal Affairs Committee;
- Social Policy Committee;

¹ For example, section 54(4) of the *Public Finance and Audit Act 1983* provides that a member of the Legislative Assembly is not eligible for appointment as a member of the Committee if they are a Minister of the Crown or a Parliamentary Secretary.

² For further information on parliamentary committees and privilege see Part Two.

- State and Regional Development Committee;
- Legislative Assembly Committee on Community Services;
- Legislative Assembly Committee on Economic Development;
- Legislative Assembly Committee on Environment and Regulation;
- Legislative Assembly Committee on Law and Safety;
- Legislative Assembly Committee on Transport and Infrastructure.

The House can also appoint standing committees concerned with matters internal to the House such as catering, the library and House procedural matters. There is no requirement under the standing orders for such committees to be established and there may be occasions when such committees are not appointed.³

The Speaker is an ex officio member of the Standing Orders and Procedure Committee as well as the Library Committee and the House Committee (S.O. 318) when they are constituted. However, it is not obligatory for either the Speaker, Deputy Speaker or Assistant Speaker to serve on any committee (S.O. 275).

The Standing Orders Committees of the respective Houses are able confer jointly if they desire and when established, the House Committees of both Houses act jointly as do the two Library Committees.⁴

Section 26.1.1 Standing Committee on Parliamentary Privilege and Ethics

This committee was first established by a resolution of the House in December 2003. The committee considers any matters relating to privilege referred to it by in accordance with standing order 92 or by resolution of the House. The committee is also the designated committee for the purpose of exercising functions under the *Independent Commission Against Corruption Act 1988* relating to Parliamentary ethical standards such as carrying out educative work relating to ethical standards and the giving of advice to elected representatives when requested on proper ethical standards. It is also responsible for reviewing the Code of Conduct for Members.

Section 26.1.2 Joint Standing Committee on Electoral Matters

The role of this committee is to inquire into and report on matters referred to it by either House or a Minister that relate to electoral laws and the administration of and practices associated with the electoral laws. Matters related to the electoral laws regarding the 26 March 2011 General Election, stand referred to the committee for inquiry.

Section 26.1.3 Joint Standing Committee on Road Safety

The committee was first established in 1982. Its role is to monitor, investigate and report on the road safety situation in New South Wales. Its terms of reference include reviewing and reporting on countermeasures aimed at reducing deaths, injuries, and the social and economic costs to the community arising from road accidents.

³ For example, the Library and House Committees were not established for the 53rd Parliament (2003-2007).

⁴ The Library Committee acts jointly with the Library Committee of the Legislative Council in accordance with the Legislative Assembly's resolution of 26 November 1968.

Section 26.1.4 Joint Standing Committee on the Office of the Valuer-General

The committee is responsible for monitoring and reviewing the exercise of the Valuer-General's functions with respect to land valuations under the *Valuation of Land Act 1916* and the *Tax Management Act 1956*. In particular, the committee is to monitor the methodologies employed for the purpose of conducting such valuations; the arrangements under which valuation service contracts are negotiated and entered into; and the standard of valuation services provided under such contracts.

Section 26.1.5 Specialist Standing Committees

Three specialist standing committees have been appointed by the Legislative Assembly for the current Parliament: Legal Affairs Committee; Social Policy Committee; and State and Regional Development Committee.

These committees are able to report on any proposal, matter or thing concerned with the subject area of the committee. The committees may be referred inquiries by the House or in writing from a Minister, or they may initiate an inquiry on their own motion. The terms of reference for these committees provides that the committees should not duplicate any inquiry under examination by a portfolio committee or another standing committee of the House.

The specialist standing committees are able to appoint sub-committees, consisting of 3 members, and to refer to a sub-committee any of the matters which the committee is empowered to consider. These sub-committees may be responsible for conducting hearings, briefings, visits of inspections and other activities but cannot make decisions concerning the conduct of an inquiry, such as the selection of witnesses, and the committee's reports.

In addition, a sessional order has been adopted for the current session to provide for a member to temporarily stand down from a specialist standing committee for a period of time, or for a particular inquiry, and for a member to be substituted for the period concerned.⁵

Section 26.1.6 Portfolio Standing Committees

Five portfolio standing committees have been appointed by the Legislative Assembly as follows:

Legislative Assembly Committee on Economic Development – The following portfolio responsibilities stand referred to the committee: Premier; Western Sydney; Treasury; Finance and Services; Planning and Infrastructure; Trade and Investment; and the Illawarra.

Legislative Assembly Committee on Community Services – The following portfolio responsibilities stand referred to the committee: Health; Medical Research; Education; Mental Health; Healthy Lifestyles; Ageing; Aboriginal Affairs; Disability Services; Family and Community Services; Women; Citizenship and Communities; Western New South Wales; and Sport and Recreation.

Legislative Assembly Committee on Transport and Infrastructure – The following portfolio responsibilities stand referred to the committee: Regional Infrastructure and

⁵ VP 22 June 2011, p. 212.

Services; Special Minister of State; Transport; Roads; Ports; Tourism; Major Events; Hospitality; Racing and the Arts; the Central Coast; and the Legislature.

Legislative Assembly Committee on Law and Safety – The following portfolio responsibilities stand referred to the committee: Attorney General; Justice; Police; Emergency Services; and the Hunter.

Legislative Assembly Committee on Environment and Regulation – The following portfolio responsibilities stand referred to the committee: Environment, Heritage; Small Business; Local Government; Fair Trading; Primary Industries; Resources and Energy; and the North Coast.

The five portfolio standing committees have been appointed to examine, inquire into and report on the following matters concerning their portfolio areas:

- (a) Any matter referred to it by the House;
- (b) Any relevant policy, bill or subordinate legislation;
- (c) Any relevant financial matter; and
- (d) Any relevant portfolio issue.

These committees have a number of functions:

- Legislative scrutiny – including evaluating the policy impact and consequences for each portfolio of any relevant bill introduced in Parliament, any existing legislation and any item of subordinate legislation.
- Financial matters – including the review of government financial management, by considering the financial documents, expenditure, performance and effectiveness of any relevant government department, agency, statutory body or state-owned corporation.
- Examination of any matter in annual and other reports – including the adequacy and accuracy of all financial and operational information and any matter concerning the efficient and effective achievement of the agency's objectives.
- Public works – consideration of any matter concerning public works related to the portfolio area.

A portfolio standing committee may be referred an inquiry by resolution of the House or in writing from a Minister.

In addition, a committee may initiate an inquiry on its own motion, except in the case of bills which must be specifically referred to the House in accordance with Standing Order 323 (Legislation Committees). Accordingly, the portfolio standing committees can initiate an inquiry in relation to reviewing the budget estimates but cannot consider the Appropriation Bills unless they are referred by the House.

As with the specialist standing committees, the portfolio standing committees are able to appoint sub-committees to undertake certain activities (see section 26.1.5 above).

Similarly, the sessional order regarding substitute members also applies to the portfolio standing committees (see section 26.15 above).

26.2 Statutory committees

Statutory committees are created under the authority of an Act of Parliament. Apart from any specific legislative provisions, they operate under the rules for standing committees. Statutory committees continue to exist whilst the Acts under which they are created are in force and Parliament continues to appoint members to serve on them. For example, the *Public Works Act 1912* has required the Parliament to elect a joint committee on public works, such a committee has not existed since the 1930s.

The statutory committees appointed for the [55th Parliament](#) are:

- Committee on Children and Young People
- Committee on the Independent Commission Against Corruption
- Committee on the Office of the Ombudsman and the Police Integrity Commission
- Committee on the Health Care Complaints Commission
- Public Accounts Committee
- Legislation Review Committee

26.2.1 Committee on Children and Young People

The joint Committee on Children and Young People was formed in August 2000. The terms of reference for the committee are set out in Part 6 of the *Commission for Children and Young People Act 1998*, sections 27-30 and Schedule 1. The committee's primary responsibility is to monitor and review the work of the Commission for Children and Young People and report its findings and recommendations to Parliament. In particular, the committee is required to examine and report on annual and other reports of the Commission for Children and Young People. The committee also has a broader responsibility to examine trends and changes in services and issues affecting children and young people, and to make recommendations as to the need for changes to the functions and procedures of the Commission for Children and Young People.

26.2.2 Committee on the Independent Commission Against Corruption

This joint committee is established under the *Independent Commission Against Corruption Act 1988*, and is the means by which the ICAC is accountable to Parliament. The committee monitors and reviews the ICAC's functions, its annual reports and the reports it makes to Parliament.

26.2.3 Committee on the Office of the Ombudsman and Police Integrity Commission

This joint committee was established in 1991 by amendment to the *Ombudsman Act 1974*, and arises from the Ombudsman's Annual Report of the previous year which noted that the position is often said to be one of an officer of the Parliament, and that

the activities of the office should be seen as an extension of the traditional work of parliamentarians, that is, taking up citizen's grievances against the bureaucracy. The committee's functions were expanded by the *Police Integrity Commission Act 1996*. The committee monitors and reviews the functions and the exercise of the functions of the Ombudsman's Office and of the Police Integrity Commission.⁶

26.2.4 Committee on the Health Care Complaints Commission

In 1994 this joint committee was established under the *Health Care Complaints Act 1993*, and has similar powers to the committees on the ICAC and Office of the Ombudsman and Police Integrity Commission in terms of reviewing the functions and annual reports of the Health Care Complaints Commission.

26.2.5 Public Accounts Committee

Established under the *Public Finance and Audit Act 1983*, the Committee has very wide powers to report on the efficiency, effectiveness and economy of government activity, principally through its powers to review the reports of the Auditor-General, the total state sector accounts and the reports of government agencies tabled in the House. The Committee is empowered to veto the appointment of candidates to the position of Auditor-General and is responsible for appointing independent reviewers to test the performance of the Auditor-General every three years. The Committee is not able to comment on proposals for public spending or matters of Government policy without a specific reference from the House or a Minister.

Attempts have been made in recent times to appoint members of the Legislative Council to the Committee. However, given the dominance of the Assembly in financial matters such attempts have been unsuccessful.⁷ See Chapter 22 for further information on the power of the two Houses in relation to public finances.

26.2.6 Legislation Review Committee

The Legislation Review Committee is established under the *Legislation Review Act 1987* and was formerly known as the Regulation Review Committee. When first established the committee was responsible for examining regulations and by-laws and reporting to the House on whether regulations should be disallowed. From 2003, the additional function of scrutinising bills before the Parliament was conferred on the committee. In doing so the committee is required to scrutinise legislation to ensure it does not unduly trespass on personal rights and liberties. The committee is also required to report on whether a bill makes rights, liberties or obligations unduly dependent upon non-reviewable decisions; inappropriately delegates legislative powers; or insufficiently subjects the exercise of legislative power to parliamentary scrutiny.

⁶ Review of the *Protected Disclosures Act 1994* under s. 32 of the Act referred to the Joint Committee of the Office of the Ombudsman, VP 16/04/1996, p. 16. It should be noted that section 32 provides that a joint committee of members of Parliament is to review the Act and that the Committee on the Independent Commission Against Corruption received a reference to review the Act from the House in 2005, VP 06/04/2005, p. 1333.

⁷ For example, in 2001, a resolution was passed by the Legislative Council to appoint three members of the Upper House to the committee. The resolution provided that in the event the Legislative Assembly does not agree to the appointment of Council members to the committee that the Legislative Council shall refer matters currently under consideration by the Public Accounts Committee to the Legislative Council General Purpose Standing Committee No. 1 for consideration and report. VP 30/11/2001, p. 1683. The matter was not considered by the Assembly and lapsed on the prorogation.

26.3 Select committees

A select committee may be appointed by either or both Houses to investigate and report on a specific matter. Select committees cease to exist when they have concluded their reports or at the time specified by the House.

In recent years joint select committees have been established to inquire and report on the Parliamentary Budget Office (2011); parliamentary procedure (2010); tobacco smoking (2006); the cross-city tunnel (2005); nuclear waste (2003); and the quality of buildings (2002). Some of these committees had specific reporting dates set out in the resolution agreed to by both Houses establishing the committee. A reporting date for a select committee can be extended by resolutions of the House (or both Houses in the case of a joint committee).⁸

26.4 Legislation committees

Legislation committees are committees established for the consideration of the provisions of a specific bill. To establish a legislation committee, any member may move a motion, without notice, immediately after the second reading has been agreed to (S.O. 323).⁹ However, standing and sessional orders have also been suspended to allow a motion to be moved referring legislation to a committee following a particular action or defined event in the House. For instance, standing and sessional orders were suspended to permit the Minister for Local Government to transmit to the Speaker the package of bills regarding local government reform and that upon receipt of the bills they were deemed to have been tabled and referred to a legislation committee.¹⁰

Under standing order 323 a legislation committee comprises three government and three non-government members and must report within six months. As a legislation committee specifically reports on proposed amendments to the clauses and schedules of the bill, when tabled, the report is set down by the Speaker for consideration in detail with the bill.

26.5 Estimates committees

Estimates committees examine in detail the Government's estimates of revenue and expenditure for the following year and the appropriation bills. See section 22.2 of Part One for detailed information on estimates committees.

26.6 Joint committees

Committees may be established jointly by the Legislative Assembly and the Legislative Council. While joint committees by convention are subject to the standing orders of the originating House, many are established under legislation and the provisions within such statutes govern the conduct of such committees.

⁸ See VP 20/11/2003, p. 496.

⁹ A bill can be referred to a specific committee in accordance with standing order 198 as an amendment to the motion "That the bill be now read a second time". The committee may canvass the public policy behind the bill. Such a referral does not establish a legislation committee which is referred the specific clauses and schedules of the bill.

¹⁰ VP 11/12/1991, p. 467.

Current joint committees (statutory and standing) are:

- Joint Standing Committee on Electoral Matters (see 26.1.2);
- Joint Standing Committee on Road Safety (see 26.1.3);
- Joint Standing Committee on the Office of the Valuer-General (see 26.1.4);
- Committee on Children and Young People (see 26.2.1);
- Committee on the Health Care Complaints Commission (see 26.2.4);
- Committee on the Independent Commission Against Corruption (see 26.2.2);
- Committee on the Office of the Ombudsman and the Police Integrity Commission (see 26.2.3); and
- Legislation Review Committee (see 26.2.6).

26.7 Powers of committees

26.7.1 Source of powers

Although there are many different types of parliamentary committees in New South Wales, their functions, powers and their procedures emanate from common sources:

(1) Acts of Parliament—

- *Parliamentary Papers (Supplementary Provisions) Act 1975* — authorises committees to publish material;
- *Defamation Act 2005* — confers a defence of absolute privilege against an action for defamation in respect of the publication of documents by committees;
- *Parliamentary Evidence Act 1901* — provides a code for the summoning, attendance and examination of witnesses by committees;
- Parliamentary Committees Enabling Acts — allows committees to continue operating beyond the prorogation or discontinuance of a session of Parliament;
- *Constitution Act 1902* — provides for a committee on the pecuniary and other interests of members to be established;
- *Commission for Children and Young People Act 1998*;
- *Legislation Review Act 1987*;
- *Public Finance and Audit Act 1983*;
- *Ombudsman Act, 1974*;
- *Independent Commission Against Corruption Act 1988*;
- *Health Care Complaints Act 1993*;
- *Police Integrity Commission Act 1996*; and
- *Public Works Act 1912* (currently no committee formed); and

(2) Article 9 of the *Bill of Rights 1688*, adopted in New South Wales by the *Imperial Acts Application Act 1969*, guarantees the privilege of freedom of speech for witnesses appearing before committees.

(3) The standing orders of both Houses (which are given force and effect by the *Constitution Act 1902*).

(4) The resolution of the House appointing the committee.

(5) The resolutions of the particular committee.

(6) Practice and convention.

26.7.2 Investigatory powers

The New South Wales Parliament, including its committees, has an inherent power to conduct inquiries. This is reflected in the fact that both Houses and its committees are able to compel witnesses to give evidence in accordance with the *Parliamentary Evidence Act 1901*.

However, a committee's powers of inquiry are confined by its functions. For instance, statutory committees such as the Committee on the ICAC or the Committee on the Health Care Complaints Commission (HCCC) have been established to oversee a statutory body but have no function to reconsider the decisions of the ICAC or HCCC respectively in relation to a particular investigation or complaint. Nor it could be argued do they have a function to review the operation of the ICAC Act or the Health Care Complaints Act generally, or the operation of other bodies with responsibilities under the legislation.¹¹ Similarly, a standing or select committee established by a resolution of the House has only those powers that are required to fulfil its functions as agreed to by the House. In some cases committee functions are left fairly wide with the resolution passed by the House indicating that the committee can investigate "any other relevant matter".¹²

There is also an issue as to whether the powers of a committee of the New South Wales Parliament are effectively limited to those matters for which the Parliament can legislate due to the inability of the Parliament and its committees to compel witnesses from other jurisdictions. As Professor Enid Campbell notes, this is an issue which is yet to be resolved by judicial decision.¹³ However, an opinion of the Judicial Committee of the Privy Council in 1914 held that the Australian Commonwealth Parliament could not legislate to establish a Royal Commission with power to compel witnesses to give evidence before it unless the terms of reference for the Royal Commission were confined to matters on which the Commonwealth Parliament could legislate.¹⁴ Professor Campbell has suggested that this must apply to all parliamentary committees established by the Parliament arguing that:

"...if any Australian House of Parliament were to visit a parliamentary witness with penal sanctions for failure or refusal to appear on summons or for refusal to testify before the House or any of its committees on a matter on which the Parliament could not legislate, the House's action possibly would be

¹¹ This is the view of the Crown Solicitor who argued in advice regarding the powers of the Committee on the Health Care Complaints Commission: "...the Committee is, as its name correctly implies, a Committee on the Commission: it has no function to review the operation of the Health Care Complaints Act generally, nor the operation of other bodies with responsibilities under that Act or under a health registration Act. Thus, the Committee has no power to enquire into the exercise by the New South Wales Medical Board of its functions, nor to enquire into the exercise by the Medical Tribunal of its functions, nor to report to the Parliament in relation to any matter relating specifically to the Board or the Tribunal. No doubt the context within which the Commission operates is a relevant consideration to the exercise of its functions: the existence of other bodies with their own statutory functions is not an irrelevant fact. However, there is a clear difference between noting the existence, powers and functions of, for example, the Board, and the quite separate step of enquiring into the exercise of the Board's powers and functions." See also section 64(2) of the *Independent Commission Against Corruption Act 1988*. For other examples see section 65(2) of the *Health Care Complaints Act 1993*; section 31B(2) of the *Ombudsman Act 1974*; section 95(2) of the *Police Integrity Commission Act 1996*; section 28(2) of the *Commission for Children and Young People Act 1998*; section 57(2) –(3) of the *Public Finance and Audit Act 1983*; and section 9(3) of the *Legislation Review Act 1987*.

¹² See for example, the resolution passed by the House to establish the Select Committee on Nuclear Waste, VP 08/05/2003, pp. 90-1.

¹³ Campbell, Enid, *Parliamentary Privilege*, 2003, p. 154.

¹⁴ See *House of Representatives Practice*, 5th edition, p. 645.

unlawful.”¹⁵

26.7.2.1 Delegation of investigatory power

In New South Wales, the power to delegate authority has been expressly conferred on the Public Accounts Committee by virtue of section 48A of the *Public Finance and Audit Act 1983*, which provides for the committee to appoint a person to conduct a review of the Audit Office.

It is unclear in the absence of statutory provisions whether a committee is able to delegate its powers to a person other than members of the Parliament.¹⁶ However, it has been held in the United Kingdom Court of Appeal that the conducting of an inquiry pursuant to an order of the House includes any inquiry conducted by a person other than a member of the House in accordance with such an order or resolution.¹⁷ This, it could be argued also applies to resolutions of a committee. See section 2.3 of Part Two for further information on the power of the Parliament to conduct inquiries.

26.7.3 Power to veto proposed appointments of statutory officers

A number of statutory committees have the power to veto proposed appointments of statutory officers, who report directly to the Parliament. For example, the Public Accounts Committee has the power to veto any proposal to appoint a person as Auditor-General within 14 days of having a proposal referred by the Treasurer.¹⁸ The actual proposal to appoint a particular person is made by the Executive with the relevant statutory committee merely accepting or rejecting the proposal.

The relevant legislation also provides that any information which comes to a committee's attention in relation to the appointment of a statutory officer, either in oral evidence given before a committee or in a document produced in evidence to a committee, must be treated as confidential and can require a committee to hold *in camera* hearings in relation to such information.¹⁹ Penalties are specified under the relevant Acts should any person, including a member of a committee, disclose confidential evidence and deliberations of the committee in this regard.²⁰

26.8 Conduct of inquiries

26.8.1 Terms of reference

Committees are provided with terms of reference as part of the legislation establishing the committee or by a resolution of the House. Within those terms of reference many committees have been given the power to generate their own specific inquiries. For example, under section 57 of the *Public Finance and Audit Act 1983* the Public Accounts Committee can determine the terms of reference for its inquiries.

¹⁵ Campbell, Enid, *Parliamentary Privilege in Australia*, 1966, pp. 163-4.

¹⁶ See *Odgers' Australian Senate Practice*, 11th edition, 2004, p. 58.

¹⁷ *Hamilton v Al Fayed* (1999) EWCA Civ 1111 (UK Court of Appeal, 26 March 1999).

¹⁸ See section 57A of the *Public Finance and Audit Act 1983*. See also section 66 of the *Health Care Complaints Act 1993*; section 64A of the *Independent Commission Against Corruption Act 1988*; and section 31BA of the *Ombudsman Act 1974*.

¹⁹ See section 58(2A) of the *Public Finance and Audit Act 1983*; section 72(2) of the *Health Care Complaints Act 1993*; section 70(1A) of the *Independent Commission Against Corruption Act 1988*; and section 31H(1A) of the *Ombudsman Act 1974*.

²⁰ See for example, section 58(2B and (2C) of the *Public Finance and Audit Act 1983*; and section 70 (1B and (1C) of the *Independent Commission Against Corruption Act 1988*.

The House can also refer a matter for investigation and report to a committee by giving it terms of reference setting out what the committee is to investigate and any reporting deadlines. Ministers are also able, in some cases, to refer matters to a committee. For example, see section 57(1)(f) of the *Public Finance and Audit Act 1983*, which provides that a Minister may refer matters to the Public Accounts Committee for inquiry and report.

Whereas the Joint Standing Committee on Electoral Matters can only “inquire into and report upon such matters as may be referred to it by either House of the Parliament or a Minister.”

In accordance with standing order 299(1) the Chair of a committee must advise the House at the appropriate time in the routine of business of any inquiries that have been referred to the committee by a Minister or that the committee has resolved of its own volition to conduct.

26.8.2. Gathering evidence

Parliamentary committees gather evidence for inquiries from a variety of sources, including written submissions, taking oral evidence from witnesses, and conducting background research and literature reviews.

26.8.2.1 Submissions

Once a committee has received or determined the terms of reference for an inquiry the general practice is to advertise these in the major newspapers with state-wide circulation inviting submissions to the inquiry from interested persons and the public. Committees may, in addition, write inviting submissions from interested parties or those with relevant knowledge in the inquiry subject.

There are a number of procedures in relation to submissions received by committees. For instance, once a submission has been received by a committee it must not be published or otherwise disclosed in that form without the committee’s authorisation. This is because unauthorised disclosure is prohibited by standing order 297 and may be a contempt of Parliament.

Submissions may be made public by resolution of a committee or when the report is tabled.²¹ Authors may request to keep all or part of their submission confidential. However, it is the prerogative of the committee as to whether such a request is agreed to as there may be instances where the committee is of the view the public interest is better served by publishing the information.

Submissions to a parliamentary committee attract the protection of parliamentary privilege under the *Defamation Act 2005* and the *Parliamentary Papers (Supplementary Provisions) Act 1975*. Legislation and case law in general treat the proceedings of parliamentary committees as parliamentary proceedings to which privilege applies. No action may be taken against a person for making a submission, and the submission may not be used in courts or tribunals to question the truth, motives or credibility of any person. However, any republication of a submission does not attract the same protection. For further information see Part Two.

²¹ Section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975*.

Authors of a submission are sometimes asked to give oral evidence before a committee at either a public or *in camera* hearing and submissions may be incorporated as part of a witness' sworn evidence, which is another means of publishing it.

26.8.2.2 Public hearings

Committees conduct public hearings to obtain oral evidence from witnesses in relation to an inquiry. Public servants are often called to provide information about government decisions but cannot comment on the merits or otherwise of particular policies.

Many witnesses appearing before a committee do so on a voluntary basis. However, committees have been vested with powers to compel witnesses to attend.²²

In the past, committees would, as a general rule, issue witnesses appearing before them with a summons prior to them being sworn in to give evidence even if they were appearing on a voluntary basis. This is no longer the practice and only those witnesses that need to be compelled to appear before a committee are summoned. Given that the vast majority of witnesses voluntarily appear before a committee because they want to give evidence, the Speaker has approved the following practice to be observed by committees in relation to the issue of a summons:

- (1) In the normal course of events no summonses are issued to witnesses;
- (2) Confirmation of current practice to pay, with the prior approval as per the usual authorities for expenditure, for the transport and reasonable expenses of key persons who might otherwise not appear before a committee. NB: Witnesses are entitled to payment at the same rate as expert witnesses to the Supreme Court. Witnesses from government departments are not normally paid except in exceptional circumstances;
- (3) The use of a summons is reserved as a last resort to compel a person's attendance before a committee on a case by case basis after consultation with the Clerk-Assistant (Committees); and
- (4) As a summons is issued by a chair on an order from the committee that this be done by way of committee resolution.

When witnesses appear to give evidence before a committee, *Hansard* provides a transcript of the proceedings. Each witness is sent a copy of the evidence they have given to correct, unless the evidence was taken *in camera*, in which case the transcript is corrected in the presence of an officer of the committee at Parliament House. Corrections of transcripts are limited to any inaccuracy in the report. Alteration of phraseology and the introduction of new material into the transcript is not permissible, nor are changes to the questions.

Unless otherwise ordered, access to uncorrected transcripts of evidence taken by a committee is to be authorised by the committee and not otherwise made available to any person or organisation.

A committee can authorise publication of the evidence given before it (including documents) by resolution pursuant to the power conferred by the *Parliamentary*

²² Section 4 of the *Parliamentary Evidence Act 1901*.

Papers (Supplementary Provisions) Act 1975. The effect of this resolution is to protect any person who publishes the documents and evidence from any civil or criminal action or proceeding that may result from publication, including defamation to the extent that the publication is fair. For further information on witnesses see Chapter 27 of Part One.

26.8.2.3 In camera hearings

The *Parliamentary Evidence Act 1901*, which sets out the procedure for the taking of evidence from witnesses before the Parliament or one of its committees, is silent on when evidence should be taken *in camera*. However, the standing orders of the House imply that all committees are empowered to hold *in camera* hearings. Standing order 296 provides:

All persons other than committee officers shall be excluded when the committee is meeting *in camera*.

Whilst committees have been empowered to hold *in camera* hearings it has become accepted practice that parliamentary committees are required to take all evidence in public unless the evidence being given relates to a secret or confidential matter, and/or the witness requests that their evidence be taken *in camera*. For statutory committees this power is defined in the legislation establishing the committee. For instance, section 69 of the *Independent Commission Against Corruption Act 1988* requires the Committee on the Independent Commission Against Corruption to take all evidence in public unless the evidence relates to a secret or confidential matter or if it relates to the proposed appointment of a Commissioner.²³

The practice of the Legislative Assembly is that a witness is offered the opportunity to make application, before or during the hearing of their evidence, for any or all of the evidence to be heard *in camera*, and is invited to give reasons for any such application.

If a witness requests to have their evidence taken *in camera*, a committee would usually deliberate on the matter and make a decision based on: the public interest; the reasons put forward by the witness, including any disadvantages the witness, or a third party, may suffer through publication of the evidence; and the nature of the reference. Generally, such a request is agreed to as a matter of course if it otherwise means not hearing from the witness.

In addition, standing order 294 provides that the Chair or any member of a committee may also request that a witness give evidence *in camera* without the witness requesting to do so. It provides:

At a hearing any person may be admitted but may be excluded at the discretion of the Chair or at the request of any committee member.

The following general principles are considered by committees when considering whether to take evidence in public or *in camera*:

²³ See sections 69 and 70 of the *Independent Commission Against Corruption Act 1988*. See also, sections 31G and 31H of the *Ombudsman Act 1974*; section 58 of the *Public Finance and Audit Act 1983*; and sections 71 and 72 of the *Health Care Complaints Act 1993*.

- Where a committee has reason to believe that evidence about to be given may reflect adversely on a person or body;
- Sub judice issues;²⁴
- Evidence which might incriminate the witness;
- Commercial in confidence;
- Classified material;
- Medical records;
- Evidence which may bring advantage to a witness's prospective adversary in litigation; and
- Evidence likely to involve serious allegations against third parties.

In the event of any disagreement among the committee members regarding the presentation of evidence *in camera*, the chair's decision will prevail. If the application to give evidence *in camera* is denied, the witness should be notified of reasons for that decision.

Evidence taken *in camera* is confidential to the committee. However, it is the prerogative of the committee whether it chooses to publish all or part of that evidence at a later time. In such cases, the committee would consult with the witness in question in an effort to minimise any potential damage to the witness which may flow from any publication. Furthermore, the House has the authority to order the production and publication of undisclosed evidence. Any unauthorised publication of *in camera* evidence may be treated by the Legislative Assembly as a contempt of Parliament.

The House has agreed to release *in camera* evidence with certain conditions attached to its release. For instance, a motion was agreed to by both Houses to enable the release of *in camera* evidence taken by the Joint Select Committee upon Police Administration to the Royal Commission into the NSW Police Service with the condition that any request for the evidence to be released be in writing to the Presiding Officers and that it be used for investigative purposes only and not for publication.²⁵

26.8.2.4 Natural justice

High Court decisions, in particular *Annetts v McCann*²⁶ have emphasised that where a statute confers on a person a power or authority to make decisions or "findings" in an inquiry which may affect an individual's rights, interest, or reputation, the rules of natural justice regulate the exercise of that power.

Natural justice requires that where an inquiry contemplates making a finding which may adversely affect the interests (including in that term career or reputation) of a person, the inquiry must extend an opportunity to that person to respond and place any relevant evidence or any rational argument before the inquiry that the affected person may want, or that the person might have previously raised if they had been aware of the risk of that finding being made.

²⁴ By virtue of Article 9 of the *Bill of Rights*, Houses of Parliament and their committees cannot be held guilty of contempt of court by reason of their proceedings. However, given this immunity, committees should take any evidence that may have the potential to prejudice a trial or judicial inquiry, or may have a tendency to prejudice issues at stake or embarrass the court involved and thereby impede the administration of justice, in private.

²⁵ VP 30/11/1994, p. 596; VP 01/12/1994, p. 608; and PD 02/12/1994, p. 645.

²⁶ (1990) 170 CLR 596.

Notwithstanding that witnesses before committees may give defamatory evidence and be protected under the *Defamation Act 2005*, the rules of natural justice require that the inquiry observe “ordinary notions of what is fair and just”. In terms of committee work, this means that when evidence is given that may give rise to potential adverse findings against a person, procedural fairness must be observed and the person invited to put their version of events.

26.8.3 Reports

26.8.3.1 Preparation of a draft report

After considering all the evidence gathered, including submissions, hearings and the committee’s own research, the committee will write and adopt a report which is tabled in the House. The report will include the committee’s findings and recommendations. In the case of legislation committees the committee will propose amendments to the bill(s) under consideration. Select committees established to report on particular issues or bills cease to exist upon the tabling of their final reports.

Under standing order 300 the first draft report is to be the work of the chair and as such is often referred to as the chair’s draft report. The principle being that the draft report is considered in much the same way as a draft bill is presented by a Minister and considered clause by clause in detail.

The primary aim of the report is to inform Parliament of a committee’s inquiry and to make recommendations and may include the following common elements:

- the chair’s foreword;
- the names of the committee members and the secretariat;
- the resolution of Parliament establishing the committee;
- the text of the advertisement calling for submissions;
- the minutes of all committee meetings in which the inquiry was considered (these can be edited to include only that information directly relevant to the inquiry and exclude other unrelated matters that may have been considered by the committee at a meeting);
- a list of all submissions received and those submissions might be incorporated into the evidence tabled with the report; and
- a list of all witnesses and the organisations or departments they represented.

Pursuant to standing order 300 committee reports must remain confidential until the report is tabled, although, informal and confidential consultations may occur with Government departments as to the ramifications of recommendations if implemented prior to meeting to adopt a report and/or recommendations. Furthermore, a committee is always required to make its report to the House.

26.8.3.2 Consideration of the draft report

The procedures by which a committee is to deal with a draft report are prescribed by standing order 301, which provides that the draft report is to be dealt with as follows:

- (1) Unless previously circulated, the chair shall read the report;

- (2) The committee may order it to be circulated and a subsequent day named for its consideration;
- (3) Unless the committee otherwise resolves, the report shall be considered paragraph by paragraph – the question being “That the paragraph be agreed to”;
- (4) A member may move an amendment to the paragraph at the time it is under consideration;
- (5) After the draft report has been considered, the whole or any paragraph may be reconsidered and amended;
- (6) After consideration, the committee may adopt the report with or without amendment.

It is usual practice for the chair to circulate the draft report among committee members well before the meeting to enable committee members ample time for consideration and discussion. Copies of the draft report are confidential and it is a contempt for any member to publicly release material contained in the draft. Furthermore, information about the report cannot be publicly released without the committee’s approval.

As noted above, standing order 301(3) requires that, unless the committee resolves otherwise, the report be considered “paragraph by paragraph”. In practice, this means that a question is proposed after the committee has considered each paragraph “That the paragraph as read be agreed to.” Any objections or amendments to the paragraph under consideration should then be proposed. The paragraph or text may then be postponed or amended. Amendments may be made on a consensual basis, or alternatively, the committee may divide.

The alternatives to considering a report paragraph by paragraph are:

- the chair may put the question to the committee that the report be taken as read, and deal with the report chapter by chapter, or as a whole; or
- if the committee has not previously discussed their individual views on key issues, the chair might wish to get an indication by considering the recommendations first. Usually the recommendations are dealt with individually and formally approved by precise resolution.

26.8.3.3 Dissenting views

Standing orders do not provide for dissenting reports and the traditional view of the Legislative Assembly is that minority reports or other forms of protest or dissent cannot be appended to a report of a committee, except as included in the committee minutes. This follows the House of Commons practice where the House requires the opinion of the committee – i.e. the opinion of the majority – and not that of individual members.

There are traditional methods of opposing a report such as proposing amendments to paragraphs or recommendations in the report including the calling of divisions or simply voting against the paragraph or recommendation. A member could also vote against the motion “that the report be adopted”. Some committees have incorporated reference to minority views in the body of the report.

More specifically, a member would propose amendments to the particular parts of the report and the alternative text would be recorded in the minutes which are appended to the tabled report.

It should be noted that on occasion provision for a minority or dissenting report to be tabled is made in a committee's terms of reference.²⁷

26.8.3.4 Tabling the report

Standing order 306 governs the tabling of committee reports. It states:

- (1) The report and associated documents of any committee (not being a legislation committee) shall be presented at the time provided in the routine of business, or at any other time with the leave of the House.
- (2) The Member presenting the report may move "That the document be printed". This question shall be decided without debate or amendment.
- (3) Reports from committees shall stand in the order in which they are presented (or reported by the Clerk when received during an adjournment) as Orders of the Day "That the House take note of the Report".
- (4) Such Orders of the Day may be considered between 1.00 p.m. and 1.30 p.m. on Fridays. Any interrupted item of business shall stand as an Order of the Day for tomorrow.
- (5) Debate on an Order of the Day may be adjourned and the resumption of the debate set down as an Order of the Day for tomorrow.
- (6) When the Order of the Day is called on and not proceeded with, consideration of the report shall be postponed until the next Friday sitting when reports are considered. If the Order of the Day is called on at that subsequent sitting and is not proceeded with, the question shall be put.
- (7) If a committee has more than one report on the Business Paper, the Chair, or Member who tabled the report may move a motion without notice, amendment or debate to facilitate the consideration of two or more of the committee's reports together.
- (8) The Member tabling the report may speak for up to 10 minutes and any other Member may speak for up to 5 minutes to the question "That the House take note of the Report" with the question being put after 30 minutes. No reply is permitted.
- (9) Orders of the Day not commenced or not completed 12 months from the date of tabling shall lapse.

The standing order does not provide for the Chair to speak immediately upon the tabling of the report. However, the chair is required under standing order 302 to sign the report and if the chair is unavailable or refuses to sign the report another member appointed by the committee can sign the report.

This standing order has been varied by sessional order to provide for the take note debate on committee reports to occur between 1.00 pm and 1.30 pm on Thursdays, and for any debates called on and not proceeded with to be postponed until the next sitting day when reports are considered. Sessional orders have also altered the speaking times for the take note debate to provide for the member tabling the report

²⁷ VP 21/08/1991, pp. 69-70 in relation to the Joint Select Committee upon the Process and Funding of the Electoral System; VP 19/06/1997, pp. 1045-6 in relation to the Joint Select Committee upon Injecting Rooms.

to speak for up to 6 minutes and any other member up to 4 minutes, with the question being put after 22 minutes. In addition, clause (9) of the standing order, which provides that any order of the day for the consideration of committee reports will lapse 12 months from the date of tabling has been removed from the current sessional order.

Committees have, at times, tabled the submissions received and the transcripts of evidence.²⁸ Legislative Assembly practice is to not table all submissions received by a committee but only those forming part of the sworn evidence of a witness. Committees may alternatively choose to resolve to publish the submissions received and post the submissions on its website.²⁹ In the past, evidence gathered by committees appointed by the House was presented by the clerk of the committee at the Bar of the House.³⁰

Some committees have specific provisions for tabling when the House is not sitting in their establishing statute or terms of reference. When such specific provisions do not apply reference is made to standing order 305. It states that:

- Should the House be adjourned and a committee agree to any report before the House resumes sitting:
- (1) The committee may send any such report, minutes and evidence taken before it to the Clerk;
 - (2) Upon receipt the documents shall be deemed to be published, and the report shall be printed and may be circulated; and
 - (3) The documents shall be reported in the House at its next sitting.

Some joint committees such as the Committee on the Independent Commission Against Corruption³¹ and the Standing Committee on Road Safety³² have specific tabling provisions in their establishing statute or terms of reference as agreed to by the Parliament. If there is no such provision, different procedures are to be followed when only one of the Houses is sitting at the time of tabling a joint committee report. If only the Legislative Council is sitting, the joint committee report is tabled in the Legislative Council and with the Clerk in the Legislative Assembly and vice versa when the Legislative Assembly is sitting and the Legislative Council is not.

26.8.3.5 Government response to committee reports

In accordance with standing order 303A, the Government is required to respond to any recommendations made in a committee report within six months of the report being tabled. If the House is sitting when the relevant Minister is required to table the response, the Minister must table the response at the time set aside in the routine of business for tabling papers. If the House is not sitting, the Minister may table the response with the Clerk and it will be reported to the House at the next sitting. The standing order provides:

- (1) On the tabling of a report from a committee, which recommends that action be taken by the Government, the Clerk is to refer the report to the relevant Minister(s), who must within six months of a report being tabled, report to the

²⁸ See for examples, VP 30/05/2002, p. 238; VP 11/04/2002, p. 162; VP 18/12/2002, p. 18

²⁹ Section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* provides a committee with the power to authorise the publication of documents received by it or evidence given before it.

³⁰ See for examples, VP 08/04/1870, p. 214; VP 25/06/1872, p. 131.

³¹ See section 68A of the *Independent Commission Against Corruption Act 1988*

³² See resolution of the House adopting the terms of reference for the Joint Standing Committee on Road Safety, PD 08/05/2003, p. 552.

House what action, if any, the Government proposes to take in relation to each recommendation of the committee.

- (2) If at the time at which the Minister seeks to report to the House, the House is not sitting, a Minister may present the response to the Clerk.
- (3) A response presented to the Clerk is:
 - (a) On presentation, and for all purposes, deemed to have been tabled and printed, and may be circulated.
 - (b) Reported to the House at its next sitting.

26.9 Committee meetings

26.9.1 First meeting

In accordance with standing order 279, the date and time of the first meeting is set by the mover of the motion for establishment if the mover is proposed as a member of the committee. Otherwise the Clerk of the Legislative Assembly calls the meeting.

One of the main tasks that the committee must perform at its first meeting is to elect a chair and a deputy chair, although some committees have a chair appointed by resolution of the House. In accordance with the standing orders the Speaker, once advised, will report the appointments of a committee chair and a deputy chair to the House (S.O. 282(2)).

The office of chair is not only important for matters of administration, meeting and other procedure but also in the determination of committee resolutions. Standing order 283 provides that any question which arises at a meeting of a committee is determined by a majority of the votes of the members present and voting. In addition, the standing order, and in many cases the founding statutes or the committee's terms of reference, gives the chair a deliberative vote, and in the event of an equality of votes, a casting vote.

26.9.2 Types of meetings

26.9.2.1 Deliberative meetings

Deliberative meetings are primarily held for committees to conduct their procedural and administrative functions. The day to day mechanics of committees, such as the election of the chair and deputy chair, adoption of minutes, scheduling of meetings, deciding on courses of inquiry, and the consideration of draft reports, all take place in deliberative meetings. It should be noted that the absolute privilege afforded by Article 9 of the *Bill of Rights* extends to written communications prepared for the consideration of a committee.³³

In accordance with the standing orders only committee members and committee officers are to be present during a deliberative meeting unless the attendance of other persons has been authorised by the committee (S.O. 295). In addition, standing order 295 provides that a committee is authorised to conduct a deliberative meeting by electronic communication without the members of the committee being present in one place so long as, when a committee deliberates, members of the

³³ This is due to the proceedings of committees being part of the proceedings in Parliament. See section 3.2 of Part Two for further information on what constitutes "proceedings in Parliament".

committee constituting a quorum are able to speak and hear each other contemporaneously.

26.9.2.2 Hearings

For the purpose of hearing witnesses, it is usual and proper practice for committees to hold formal meetings in which sufficient members are in attendance to constitute a quorum. As noted, such hearings are usually held in public but may, in some circumstances, be held *in camera*. Public hearings may be preceded by a deliberative meeting. Formal hearings are subject to the protection of parliamentary privilege and the requirements of the standing orders.

Hearings may occasionally go into deliberative mode to decide on courses of action when circumstances are difficult or unusual. These include the consideration of requests for evidence to be heard *in camera*, or if witnesses refuse to answer questions.

Committees are authorised under standing order 295 to hold a hearing by electronic communication without members of the committee or witnesses being present in one place provided that:

- (a) When a committee deliberates, members of the committee constituting a quorum are able to speak to and hear each other contemporaneously; and
- (b) When a witness gives oral evidence, members of the committee constituting a quorum are able to hear the witness contemporaneously and to put questions to the witness in each other's hearing.

26.9.2.3 Briefings and visits of inspection

A committee may also meet for the purposes of gathering information such as undertaking visits of inspection, conducting briefings, or attending conferences and seminars that have been arranged so as not to constitute a formal hearing. While such occasions constitute a committee meeting, formal decisions cannot be made at such meetings. For committee decisions to be made only committee members and committee staff may be present.

26.10 Procedures in relation to meetings

26.10.1 Minutes

The minutes of the meetings are the formal record of those who attended, the resolutions of the committee, and the topics discussed. The minutes do not record the details of debate or discussion. Standing order 285 states:

The minutes of committee meetings shall record:

- (1) Members present and apologies received.
- (2) Every motion and amendment moved and the name of the mover.
- (3) Every proceeding and decision not the subject of a resolution.
- (4) The names of Members voting in a division and whether for or against the motion.

The minutes of a committee meeting are drafted following the meeting and a copy is provided to each member of the committee with the notice of the next meeting. The minutes are then confirmed at the next meeting and adopted by a mover and

seconder. Strictly speaking a seconder is not necessary but are taken to reflect broader agreement to the record of events.

26.10.2 Quorum

The numbers of members required to constitute a quorum differs from committee to committee depending on the number of members appointed to serve. It is governed by the terms of reference as specified in the legislation or resolution of the House establishing the committee. However, for joint committees by convention at least one member from each House must be in attendance for a quorum to be constituted.

For Legislative Assembly committees that do not specify the conditions for the constitution of a quorum in their terms of reference standing order 280 applies, which provides that a quorum for committees is three members.

For joint committees that do not specify the conditions for the constitution of a quorum in their terms of reference, standing order 321 of the Legislative Assembly applies, which provides that at least three members of the House must be present at every meeting of a joint committee. This is mirrored in the standing orders of the Legislative Council (S.O. 220).

Under standing order 281, if a quorum is not present within 15 minutes of the time set for a meeting, the meeting lapses and the chair will convene another meeting as soon as is practicable. If a chair has not been elected the Clerk will issue notices for the next meeting.

A quorum is required in order for a committee to make decisions and it is arguable that a quorum is also required in order to make the proceedings of a committee valid and thus attract parliamentary privilege.³⁴ For further information on quorums and parliamentary privilege see section 3.2 of Part Two.

26.10.3 Presence of people other than members or staff of the committee

Standing order 295 provides that at a deliberative meeting only committee members and committee officers shall be present unless the attendance of other persons has been authorised by the committee. Committees often authorise the attendance of experts or statutory officers such as the Ombudsman to attend a deliberative meeting of a committee to provide a briefing to members on issues being considered by the committee.

In relation to hearings held by a committee for the purposes of gathering evidence from a witness, those held in public enable any person to attend and listen to the proceedings unless they have been specifically excluded at the discretion of the chair or at the request of any committee member (S.O. 294). When a committee meets *in camera* all persons other than the members and staff of the committee are excluded from the proceedings. (S.O.296).

26.10.4 Video and teleconferencing

As noted in sections 26.9.2.1 and 26.9.2.2 committees are authorised to hold deliberative meetings and hearings by electronic communication i.e. video and teleconferencing.

³⁴ See *House of Representatives Practice*, 5th edition, 2005, p. 693.

Standing order 295(2) was approved by the Governor in July 2009. Prior to this a committee could only hold a meeting or hearing by electronic communication if authorised by the House. For example, in 1999 both Houses authorised a joint committee to take evidence by telephone. The resolution passed by both Houses provided:

*That this House authorises the Committee on the Independent Commission Against Corruption to hold a meeting on Thursday 25 November 1999 by electronic communication without witnesses being present in the one place provided that a quorum of members is present in the one place and that the witness gives oral evidence and the quorum of members present are able to put questions to and hear the witness contemporaneously.*³⁵

Taking evidence by telephone in this instance was used to save the cost of flying a witness in from interstate and to minimise the inconvenience to the witness.

The New South Wales Parliament has a video-conference facility to enable committees to take evidence through such means.

26.10.5 Motions and voting

A number of standing orders govern the moving of motions and voting in committee meetings in particular circumstances. Standing order 283, unless otherwise ordered or authorised by statute, provides that a question arising at a meeting of a committee shall be determined by a majority of the votes of the members present and voting, and that the chair shall exercise a deliberative vote and, in the event of an equality of votes, shall exercise a casting vote, except upon a private bill.³⁶ Standing order 301 provides for the procedure that should be followed by committees when considering a draft report (see section 26.8.3.2 above).

Certain practices have arisen in relation to moving motions and voting in a committee that are not covered by the standing orders. For instance, practice has been that any resolutions put to a committee must be moved and agreed upon by a majority of members to be valid. Motions do not have to be seconded in committee, although seconding a motion indicates broader support among members of the committee. Divisions can be held on any question and it is generally accepted that dissent is able to be noted in the minutes. If more than one member dissents the standing orders do not provide how a division is conducted in a committee meeting. House of Commons (UK) practice for a division is for the Clerk to call over in alphabetical order each member's name who then answers "aye" or "no" or states that they decline to vote.³⁷

26.10.6 Conflicts of interest

Standing order 276 provides that a member cannot participate as a committee member in a matter under inquiry by a committee if personally interested or if the member has a direct pecuniary interest in the matter under inquiry not held in

³⁵ VP 10/11/1999, p. 226.

³⁶ Statutory committees such as the Committee on the Independent Commission Against Corruption and the Public Accounts Committee have statutory provisions which confer the chair of the committee with the power to have a deliberative and a casting vote, in the event of an equality of votes – see section 68(6) of the *Independent Commission Against Corruption Act 1988* and section 56(6) of the *Public Finance and Audit Act 1983* respectively.

³⁷ *May*, pp. 750-1.

common with other citizens of the State. This is an extension of the standing order regarding pecuniary interests, that is, a member is precluded from voting on any matter in the House in which the member has a direct pecuniary interest not held in common with other citizens of the State (S.O. 176).

Conflicts of interest may arise in relation to the personal views of members. However, in a Parliamentary environment strong personal views are not unusual and certainly do not disqualify a member from taking part in committee processes.

26.11 Confidentiality of committee documents and disclosure of evidence

The files and other records of a committee are confidential to it and may be made available to others only by order of the committee or of the House itself, or in limited circumstances, by authority of the Speaker.³⁸ Standing order 297 provides:

A Member or any other person shall not disclose evidence, submissions or other documents and information presented to the committee which have not been reported to the House unless such disclosure is first authorised by the House or the committee.

Documents which were in the public domain prior to their submission to a committee are not confidential.

In November 2006 a new standing order was adopted to permit committees to have access to evidence and records of similar committees appointed during a previous session of the same or of a previous parliament (S.O. 310). Prior to the adoption of this standing order the House regularly passed resolutions providing for committees to have access to the documents and proceedings of related committees from previous Parliaments³⁹ and sessions.⁴⁰

All transcripts of evidence taken by committees remain confidential until the committee authorises its release. This may be immediately after the transcript becomes available, after the witness has corrected the transcript or after the report to which the transcript relates has been tabled. In relation to *in camera* evidence, a committee must use its discretion as to whether or not such evidence should be released in the public interest, particularly if the witness does not agree to its release. In the case of statutory committees, if evidence has been given *in camera* in accordance with statutory confidentiality provisions, the committee can only disclose or publish such evidence with the written agreement of the witness.⁴¹

Section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* assumes that those seeking to disclose evidence taken *in camera* should seek the authorisation of the House or the committee concerned. For instance, in 1996 the Commissioner appointed to the Royal Commission into the NSW Police Service, after being granted access to *in camera* evidence of the Select Committee Upon Prostitution, requested the House to allow the Commission to make public the fact that certain evidence had been given to the select committee. The House did not

³⁸ Standing order 33 provides that: The Clerk shall have custody of all official records of the House and all papers tabled. Such papers shall not be taken from the Department of the Legislative Assembly without the permission of the Speaker.

³⁹ For example, see VP 28/05/2003, p. 1349.

⁴⁰ For example see VP 28/02/2002, p. 53 where a motion was required to enable a select committee which had lapsed due to prorogation to be re-established and given access to the records of the same committee which had been established in the previous session.

⁴¹ See for example, section 70 of the *Independent Commission Against Corruption Act 1988*.

authorise the request noting that such action had the “potential to breach Article 9 of the *Bill of Rights*.”⁴²

The following materials and evidence can be disclosed:

- parts of committee proceedings which are open to the public;
- any media release or public statement made by the chair of a committee with a view to informing the public of the nature of its inquiry;
- written submissions presented to the committee when the committee has given permission for them to be released for publication;
- written submissions forming part of the sworn evidence of a witness; and
- any submission which the chair may refer to any person for the purpose of assisting the committee in its inquiries.

Breaches of confidentiality can be reported to the House in the form of special reports or alternatively in a report to the committee chair.

26.12 Joint inquires and meetings

The House has passed resolutions to provide for inquiries to be undertaken on a joint basis. For example, in November 1997 the House gave leave to enable the Public Bodies Review Committee and the Standing Committee on Public Works to sit together for the purpose of conducting a joint inquiry into issues relating to and arising from the regulation of the procurement of goods and services, competitive tendering and contracting in the New South Wales public sector.⁴³

Leave of the House is also required for Legislative Assembly and joint committees to confer with a committee of the Council (S.O. 311). On occasion, both Houses have passed resolutions enabling the Legislative Council Privileges Committee to meet and hold joint hearings with the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics.⁴⁴

26.13 Effects of prorogation on parliamentary committees

Prorogation is the termination of a parliamentary session by the Governor, usually acting on the advice of the Government. [While section 10A of the *Constitution Act 1902* empowers the Governor to prorogue Parliament it does not define "prorogue" or detail the effect of prorogation.](#) However, it is generally accepted that all parliamentary business is suspended or even ended by prorogation. This understanding has its roots in long standing parliamentary traditions originating at Westminster. *May* notes:

*The effect of a prorogation is at once to suspend all business, including committee proceedings, until Parliament shall be summoned again...*⁴⁵

A parliamentary committee is a subordinate body which derives its powers and authorities from the House or Houses establishing it. This may be by resolution, standing order or a specific enactment but in all cases a parliamentary committee is

⁴² PD 27/11/1996, pp. 6738-9.

⁴³ VP 20/11/1997, pp. 299.

⁴⁴ VP 03/04/2001, p. 13007 and VP 09/06/2005, p. 1464.

⁴⁵ *May*, p. 274.

answerable to its creator. As such it follows that the authority of a committee cannot exceed the authority of its parent body:

*...a committee only exists, and only has power to act, so far as expressly directed by the order of the House which brings it into being. This order of reference is a firm bond, subjecting the committee to the will of the House; the reference is always treated with exactness and must be strictly interpreted ... The House may at any time dissolve a committee or recall its mandate, and it follows from the principle laid down that the work of every committee comes to an absolute end with the close of the session.*⁴⁶

In the absence of specific statutory provisions or standing orders enabling a committee to continue its work during any prorogation the work of a committee comes to a close in accordance with the tradition noted above. Select committees established by resolution cease to exist on prorogation because the force of the resolution expires on prorogation. A similar committee established in a subsequent session is, in fact, a new committee. Prior to the adoption of standing order 310 specific authorisation was required from the House for select committees re-appointed after prorogation to access the records of its predecessor.⁴⁷ However, standing committees established by resolution, under standing order 315, continue to exist after prorogation and their membership is unaffected but they may not meet or transact business until the opening of the new session. However, Parliament may legislate to provide for the continuation of select committees and the authority for committees to sit and transact business following prorogation and into the next session.⁴⁸

Statutory committees are established by Acts of Parliament which usually provide for the committee to continue for the life of a Parliament and meet and transact business (including taking evidence) during the recess between a prorogued session and the next session of the same Parliament. For example, section 68(8) of the *Independent Commission Against Corruption Act 1988* provides that:

The Joint Committee may sit and transact business despite any prorogation of the Houses of Parliament or any adjournment of either House of Parliament.

As with all committees, statutory committees cease to exist when the Parliament is dissolved or expires with the effluxion of time.

26.14 General provisions

Unless otherwise ordered or provided for in legislation the following rules apply to committees appointed by the House:

- A committee consists of at least five and not more than ten members. In all committees three members form a quorum (S.O. 273 & 280);
- [Members are appointed and discharged from committees by motion, which may be moved without notice when there is no question before the Chair \(S.O. 274\);](#)

⁴⁶ Josef Redlich, *The Procedure of the House of Commons*, Vol II, AMS Press, New York, p. 196.

⁴⁷ Resolution passed by the House to refer all minutes and transcripts of proceedings and other documents of the Select Committee on Salinity appointed during the second session of the Fifty Second Parliament to the Select Committee on Salinity appointed during the third session of the Fifty Second Parliament. VP 28/02/2002, p. 53.

⁴⁸ For example see the *Parliamentary Committees Enabling Act 1996* and the *Parliamentary Committees Enabling Amendment Act 1997*.

- The names of the members to serve on a committee or the means of their appointment, such as nomination in writing to the Clerk by the leader of a party, may be contained in the motion appointing the committee (S.O. 277);
- If called for by a member, the committee's members shall be chosen by ballot (S.O. 278).⁴⁹ The demand for a ballot may be made after the member who has moved for the appointment of the committee has spoken in reply;⁵⁰
- A member (other than the Speaker, Deputy Speaker or Assistant Speaker (S.O. 275) should not decline to serve on a committee and there is no provision for a member to resign from a committee appointed by resolution unless a motion for the member to be discharged has been agreed to by the House.⁵¹ Provision is made in legislation establishing a number of statutory committees for members to resign by writing to the Speaker to do so.⁵² In 1974, on the motion for the appointment of a select committee to consider the system of appointment of judges to the High Court, two of the five members nominated to serve on the committee intimated to the House that they were not willing to serve.⁵³ A ballot was called for and the two members, notwithstanding their disinclination, were elected.⁵⁴ One of the two members concerned raised the matter as a matter of privilege. He stated that he was aware of the British convention that a member could not relieve himself from the obligation of a member to obey the commands of the House, by declining to serve on a committee. In stating that a *prima facie* case had not been established the Speaker said that he did not think that this was a case in which the House was totally bound by English precedent. He understood that the House had on occasions permitted a member of a select committee to resign from such committee and that on other occasions the House had discharged a member of a select committee and replaced him with another member.⁵⁵ At subsequent sittings each of the two members submitted their resignations to the Speaker, which were reported to the House. The matter was determined by the House discharging the two members and appointing members in their place;⁵⁶
- The chair and deputy chair are elected by the committee at the first meeting or if a vacancy occurs and the Speaker reports the appointments to the House (S.O. 282). However, exceptions to this rule have occurred where the chair of the committee was named in the terms of the motion appointing the committee;⁵⁷
- Under standing order 283 a question arising at a meeting of a committee is determined by a majority of the votes of the members present and voting. It also provides that the chair of a committee has a deliberative vote and in the event of an equality of votes a casting vote. However, at times the House has agreed to motions establishing committee which specifically provide that

⁴⁹ VP 29/09/1908, p. 133; VP 12/02/1918, pp. 190-1.

⁵⁰ VP 12/09/1905, p. 182.

⁵¹ *May*, pp. 741 - 742; PD 07/05/1942, p. 3318.

⁵² See for example section 6(1)(e) of the *Legislation Review Act 1987*.

⁵³ PD 19/02/1975, p. 3620.

⁵⁴ VP 19/02/1975, p. 295.

⁵⁵ PD 25/02/1975, p. 3809.

⁵⁶ VP 12/03/1975, p. 366; and VP 18/03/1975, pp. 380-2.

⁵⁷ PD 20/06/1956, p. 583 when the Attorney-General was appointed as Chairman on the Australian Constitution Committee; and PD 16/11/2005, p. 19863 when The Reverend the Hon. Fred Nile MLC was appointed Chairman of the Joint Select Committee on the Cross City Tunnel.

the chair shall only exercise a deliberative vote and in the event that there is an equality of votes that the question will pass in the negative.⁵⁸

- Under the standing orders, committees have power to send for persons, papers and records, exhibits and things (S.O. 288). The extent of such powers, except where supported by the *Parliamentary Evidence Act 1901* or any other statute, is uncertain (see Chapters 25 and 27 of Part One and section 2.4 of Part Two);
- Standing order 298 requires a committee to report immediately to the House any serious allegations about a member of the House disclosed to it at once without further investigation. This matter may only be considered by a substantive motion in the House;
- Lists of all committees are displayed on notice boards (S.O. 309);
- Bills may be referred:
 - (a) To a specified committee as an amendment to the question "That this bill be now read a second time" or by specific motion;
 - (b) To estimates committees if an appropriation or parliamentary appropriation bill; and
 - (c) To legislation committees.⁵⁹

⁵⁸ See motion appointing the Select Committee upon the Legislative Assembly Supplementary Budget Allocation, VP 16/10/1991, p. 246.

⁵⁹ It should be noted that the current committee system also provides for portfolio standing committees that are able to inquire into any bill introduced in Parliament within their designated portfolio areas. These committees are separate to legislation committees established under standing order 323.