

**Submission
No 5**

INQUIRY INTO LEGISLATIVE COUNCIL COMMITTEE SYSTEM

Organisation: Department of the House of Representatives
Date received: 2/03/2016

*PARLIAMENT OF NEW SOUTH WALES
SELECT COMMITTEE ON THE LEGISLATIVE COUNCIL COMMITTEE SYSTEM*

INQUIRY INTO THE LEGISLATIVE COUNCIL COMMITTEE SYSTEM

DEPARTMENT OF THE HOUSE OF REPRESENTATIVES SUBMISSION

Introduction

The terms of reference note that the inquiry has been established to inquire into and report on how to ensure that the committee system of the Legislative Council continues to enable the Council to effectively fulfil its role as a House of Review. A discussion paper was provided as part of the process.

The Department of the House of Representatives has chosen to address a selection of questions from the discussion paper and to provide information about the arrangements that apply in the House of Representatives in relation to these matters. The purpose is to provide comparative material for the information of the Select Committee, noting that the arrangements that are appropriate for the Legislative Council are matters for the Council.

Background

In 1987 the House of Representatives established a comprehensive committee system by setting up eight general purpose standing committees. With the extension at that time of the functions of the Joint Committee on Foreign Affairs and Defence, the House had the capacity to monitor or to ‘shadow’ the work of all federal government departments and agencies.¹

The House of Representatives currently has 10 general purpose standing committees established under the standing orders of the House. The committees undertake scrutiny, accountability and policy review roles in relation to the work of the Australian federal government. Each committee has 10 members, six government and four non-government, with powers as prescribed by the standing orders.

The standing orders also provide for eight committees concerned with the operations of the House (for example, Privileges and Members’ Interests, Petitions, and Procedure). Members also serve on 17 joint committees: eight committees are established pursuant to statute (including the Joint Committee of Public Accounts and Audit, the Parliamentary Standing Committee on Public Works and the Parliamentary Joint Committee on Intelligence and Security) and nine committees are established pursuant to resolutions of the House and the Senate. Two of the latter joint committees are select committees, that is, they are established to inquire into a specific matter, and cease to exist upon reporting, unless their term is extended pursuant to resolution of the Houses.

¹ *House of Representatives Practice*, 6th ed, p 642.

The committees are supported by small secretariats of parliamentary staff. The secretariats provide advisory, research, report drafting and administrative support for the committees. Another important role of secretariats is to support the committees in facilitating public engagement with their work.

2. *Do you have any comments about the composition of Legislative Council committees or the appointment of chairs?*

The number of members of a House of Representatives or joint committee is determined by the standing orders, by resolution, or by the Act establishing the committee. In most cases, the standing orders or resolutions will also determine the party composition of the committee, specifying the number of Members from government and non-government parties. In practice this ratio reflects the representation of the respective parties in the House (s) and this has resulted in changes to the relevant standing orders from Parliament to Parliament.²

Office holders and Ministers have not normally served on committees, except in an *ex officio* capacity on committees concerned with the operations of the House or the Parliament. On at least one occasion, however, a Parliamentary Secretary has served on a committee due to the particular character of the electoral division of the Member.³

In the current Parliament, for the House committees established pursuant to the standing orders, the Chair is appointed by the Prime Minister and has a casting vote only. Deputy Chairs are appointed by the Leader of the Opposition.⁴ In previous parliaments, the standing orders provided that the committee would elect a member as its Chair, taking into account any special provisions in the standing orders or resolution of appointment.

In the 43rd Parliament, a Parliamentary Reform Agreement was negotiated between the major parties and three non-aligned members of the House in the context of the hung Parliament following the general election in September 2010. Most of the commitments in the agreement were implemented including through amendments to standing orders. The changes proposed for committees included a reduction in the number of House general purpose standing committees (from 12 to nine), and a reduction in the membership of these committees (from 10 to seven). These proposals were consistent with recommendations of the House of Representatives Standing Committee on Procedure in its report: *Building a modern committee system An inquiry into the effectiveness of the House Committee system*, June 2010. The Procedure Committee recommendations were aimed at improving the workability of the committee system for Members of the House.⁵

Generally, House of Representatives and joint committees are chaired by members from the governing party. In the 43rd Parliament, the Parliamentary Reform Agreement

² *House of Representatives Practice*, 6th ed., p. 659.

³ *House of Representatives Practice*, 6th ed., p. 656.

⁴ SO 232(a) .

⁵ The number and membership of the House general purpose standing committees were reduced in the 43rd Parliament as required by the Reform Agreement. However, it did not appear that the committee system became more workable for Members in that Parliament as there was an increase in the number of joint committees and a large bills inquiry workload.

required that the Chairman of the Joint Parliamentary Committee on Public Accounts and Audit (JCPAA) be drawn from a non-Government party or be a non-aligned Member. The chairs of the JCPAA and of the House Regional Affairs Committee were both non-aligned Members in the 43rd Parliament.

9. *In general do committees allocate sufficient time to the questioning of witnesses? Should there be a process for allowing more time with certain witnesses?*

In House and joint committees supported by the Department of the House of Representatives, the allocation of time to the questioning of witnesses is decided by the committee with advice from the secretariat. The amount of time allocated to witnesses is also dependent on the availability of the witnesses.

The committee is able to tailor its hearing program to ensure that it has appropriate time with witnesses and may also seek to follow-up with witnesses if the committee has additional questions. Follow-up may be through scheduling of an additional hearing or through correspondence.

A departmental information brochure for the general public—*Appearing at a Public Hearing*—provides the following advice for witnesses at parliamentary committee hearings:

The committee decides who will be invited to give evidence at a hearing. The committee secretariat will contact witnesses to discuss the date, time and place of a hearing. Depending on the topic, a committee may occasionally have a ‘community statements’ segment as part of the official program, at which members of the public can make brief statements to the committee.

An organisation invited to give evidence will usually determine who will represent it at the hearing, although a committee may request specific office holders or individuals to attend. Organisations should ensure that they send to the hearing witnesses who have appropriate knowledge of the issues before the committee.⁶

10. *Should a process be introduced to examine or debate government responses?*

Government responses to committee reports are an integral part of the committee process. The federal government formally responds to committee reports by way of a statement presented to the House or Houses. The practice was first introduced in 1978 when Prime Minister Malcolm Fraser stated on behalf of the government that the responsible Minister would report within six months of the tabling of a parliamentary committee report indicating the government’s attitude towards recommendations in that report.⁷ The period of time was reduced in 1983 to three months, but subsequently extended back to six months by resolution of the House in September 2010⁸.

⁶ Appearing at a public hearing

http://www.aph.gov.au/Parliamentary_Business/Committees/House/Appearing_as_a_witness

⁷ House of Representatives, *Hansard*, 25 May 1978, pp. 2465 – 2466.

⁸ Government responses to committee reports, Resolution of the House, adopted 29 September 2010.

Pursuant to the resolution, government responses to recommendations contained in House or joint committee reports are to be presented 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 such a statement is not presented or the committee is not satisfied, the committee may bring the matter to the attention, if appropriate, of the Auditor-General for assistance in resolving matters referred to in the report or to the Speaker to assist in resolving the response process.

Twice yearly, the Speaker presents a schedule to the House listing government responses to House of Representatives and joint committee reports as well as responses outstanding. Subsequently the Leader of the House presents a response to the schedule presented by the Speaker, setting out a list of parliamentary committee reports and showing the stage reached with the government response in each case.

The House Social Policy and Legal Affairs Committee has recently undertaken an inquiry into a government response to a previous report of the committee. In the previous Parliament, the committee conducted an inquiry into the arrangements surrounding crimes committed at sea. The government response to this report was presented in the current Parliament, approximately 16 months after the original report was tabled. Following the delay in the government response and noting that only two of the original eleven recommendations were agreed to, the committee chose to conduct an inquiry to consider the issues raised by the government response. The inquiry was initiated by the committee pursuant to its power to inquire into annual reports⁹.

There are a number of committees which routinely inquire into annual reports (for example, the House Standing Committee on Economics and the Joint Standing Committee on Foreign Affairs, Defence and Trade). Responses to recommendations can be followed up each year through these inquiries.

11. Is the time allowed for a government response to a committee report (six months) too long?

As mentioned, since 1978, governments have followed a practice of responding formally to committee reports in the House of Representatives. The period of time was initially six months but in 1983 this was reduced to three months and in September 2010 extended back to six months.

In the Report to the Senate by its President on government responses outstanding to parliamentary committee reports, it is indicated that although the House agreed to the resolution on Government responses in September 2010, the Senate has not agreed to a similar resolution and there is still an expectation of a response in three months for Senate and joint committee reports tabled in the Senate.¹⁰

⁹ SO 215 (c).

¹⁰ President's Report to the Senate on government responses outstanding to parliamentary committee reports, 1 December 2015.

12. *Under what circumstances should a committee decide to keep a submission or a transcript of evidence partially or fully confidential?*

The decision of whether to keep a submission or a transcript of evidence partially or fully confidential is entirely at the discretion of the committee.

As a general principle, committees aim to publish as much written and oral evidence as possible, except where there is a legitimate reason for not doing so. 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 these circumstances, a committee may decide to authorise publication with certain material omitted.¹¹ A committee may also choose not to authorise publication of a submission or part of a submission in order not to make public criticism of an individual, particularly if the issue is not relevant to the terms of reference.

Electronic publication means that material becomes available to a wide audience, and can often be readily found through search engines. Committees are aware of the risks of the great damage that can be done in these circumstances if, for example, there is a false or reckless attack or publication of personal details. They seek to balance the interests of openness and accountability with the interests of individuals.¹²

In relation to expunging material from evidence, as cited in *House of Representatives Practice*¹³, the House Standing Committee on Procedure has 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. The Procedure Committee 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.

The House resolution on procedures for dealing with witnesses has detailed provisions in relation to taking evidence in camera.¹⁴ Witnesses are to be offered, before giving evidence, the opportunity to apply, before or during the hearing of the witness's evidence, for any or all of the evidence to be heard in camera, and are to be invited to give reasons for any such application. If the application is not granted, the witness is to be notified of reasons for that decision. Before giving any evidence in camera, a witness is to 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 is to be advised in advance.

¹¹ *House of Representatives Practice*, 6th ed, p. 699.

¹² Wright, B. Patterns of change – parliamentary privilege. December 2007, p. 25.

¹³ *House of Representatives Practice*, 6th ed, p. 706.

¹⁴ Procedures for dealing with witnesses, Resolution of the House adopted 13 November 2013.

13. *Should inquiry participants be granted anonymity or confidentiality if they are concerned about intimidation or retribution for giving evidence?*

As referred above, the decision of whether inquiry participants are granted anonymity or confidentiality is at the discretion of the committee.

Submissions may be published with the submitter's name withheld, and evidence can be taken in camera.

A submission is not accepted where the submitter has not supplied a name or contact information to the committee.

14. *Would the introduction of a parliamentary privileges act in New South Wales, similar to the Australian and New Zealand statutes, assist Legislative Council committees to undertake their inquiry role?*

As indicated in the Select Committee's Discussion paper, New South Wales is unusual amongst Australian jurisdictions in not having statutory definition of the powers and privileges of Parliament.

The Department notes the background leading to the development and enactment of the *Parliamentary Privileges Act 1987* in the Commonwealth¹⁵, and the significant contribution that legislation can make to clarifying parliamentary privilege.

It has not been the experience of the House of Representatives that the prescription in section 16 of the *Parliamentary Privileges Act 1987* of what constitutes 'proceedings in parliament', has been limiting. The provisions of sections 16(2)—including (a) the giving of evidence before a House or committee, and evidence so given; and (b) the presentation or submission of a document to a House or committee, might be considered helpful for committees and witnesses for the clarity that is offered. Paragraph 16(2)(c), which includes 'the preparation of a document for purposes of or incidental to the transacting of any such business' within the meaning of 'proceedings in parliament', gives a potentially broad protection but until it is considered by the courts it is not possible to be absolutely clear about its extent¹⁶.

16. *Should the Legislative Council introduce privileges resolutions, similar to resolutions adopted by the Australian Senate in 1988?*

For information, the House of Representatives has adopted the following similar resolutions:

Right of reply of persons referred to in the House (adopted 27 August 1997, amended 13 February 2008 am)

Procedures for the protection of witnesses before the Committee of Privileges and Members' Interests (adopted 25 November 2009)

¹⁵ Hon Lionel Bowen MP, Attorney-General, House of Representatives, *Hansard*, 19 March 1987, pp. 1154 – 1156.

¹⁶ *House of Representatives Practice*, 6th ed, p. 737.

Procedures for dealing with witnesses (adopted 13 November 2013)

Procedures of the House of Representatives for dealing with matters of contempt (adopted 25 November 2009).

18. Is the current level of community engagement in committee inquiries adequate?

The Department notes the importance of community engagement as reflected in the following paragraph from the House of Representatives Infosheet 4 – Committees.¹⁷

In a sense committees take Parliament to the people and allow direct contact between members of the public and groups of Members of the House. Because they can travel extensively throughout Australia and have flexible procedures, they provide opportunities for people to have their say on the issues being investigated. By simply undertaking an inquiry a committee may promote public debate on the subject at issue.

19. How could community engagement be improved?

Since 1998, the Department of the House of Representatives has allocated a small number of specialist staff to assist in informing and engaging the public in the work of the House and its committees.¹⁸ These staff are currently located in the department's Community Outreach Unit, part of the Parliamentary Business and Information Services Office. Supporting parliamentary committees to facilitate community engagement in their work is now recognised as an important component of departmental committee work.

At the start of each committee inquiry, the committee secretariat develops a communication strategy for the inquiry, segmented, if necessary, into the various stages of the inquiry process. Communication activities are tailored to individual committees and inquiries, and a template and framework to assist are provided in the department's manual of Committee Office procedure and practice.

In general terms, the aims of a communication strategy are to:

- inform interested Australians of an inquiry
- raise the profile of the committee's work
- obtain high quality submissions
- increase attendance at public meetings
- increase awareness of the role of parliamentary committees and the workings of the House of Representatives.

¹⁷ House of Representatives Infosheet 4 – Committees.

¹⁸ The importance of community participation in committee inquiries was recognised in a landmark report of the House of Representatives Standing Committee on Procedure *It's your House Community involvement in the procedures and practices of the House of Representatives*, Canberra, 1999.

Issues considered when developing a communication strategy include budget, timing, inquiry topic, committee objectives and groups that the committee may wish to reach. The communication strategy:

- clarifies issues and key messages
- identifies target audiences
- anticipates the likely level of public interest
- sets out a plan of action, including the initiatives, tools, time frames, budgets and evaluation methodologies to be applied
- anticipates media interest and the targeting of appropriate media, if required
- clarifies whether the committee would wish to generate additional interest in its work and at what stage it would like it to be generated.

The proposed strategy is discussed with the chair and then with the committee to seek the committee's endorsement before implementation. The communication strategy is also considered as part of the inquiry's risk assessment. The committee generally, and the chair in particular, may take a leading role in promoting a particular inquiry.

The endorsed communication strategy is revisited as the inquiry proceeds to ensure that it remains effective and any changes are discussed in advance with the chair and with the committee again.

20. How could committees better utilise social media for inquiries to engage with the community?

The Department of the House of Representatives uses the following social media platforms to engage with the community, both in terms of the work of committees and the broader Parliament.

Twitter twitter.com/AboutTheHouse (35,000 followers)

Facebook facebook.com/athnews (4000 followers)

Youtube youtube.com/athnews (2000 subscribers)

The Department is also trialling other platforms to see what new options are available. For example, an Instagram account (photo sharing platform) has been established for the Joint Standing Committee on Electoral Matters inquiry into Electoral Education.

The success of these social media platforms can be partly attributed to content planning. The department's specialist social media manager has developed a content calendar that identified key dates and predicted topics likely to trend on social media. This has maximised the relevance and reach of published content.

Giving the social media platforms a “personality” and a consistent voice has also been useful in building rapport with followers. The ability of the social media manager to respond to online queries promptly (confirming answers with parliamentary colleagues) has also helped the accounts to be regarded as trusted and reliable sources of information.

21. *Are there any measures the committee staff could take to improve the engagement of individuals with a specific interest in addition to the peak and representative bodies?*

An example of a committee’s engagement with a wider group of stakeholders can be seen in the House of Representatives Standing Committee on Indigenous Affairs’ current inquiry into educational opportunities for Aboriginal and Torres Strait Islander students.

As part of this strategy, the committee wished to focus on the experience of students, parents and families, and school staff. It also wanted the inquiry to develop avenues and networks to maximise Aboriginal and Torres Strait Islander engagement, as well as the engagement of young people in the inquiry. The committee also was aware of not wanting to reproduce previous reports on Indigenous education and to seek answers to questions that may not have been asked before.

The committee secretariat in collaboration with the department’s Community Outreach Unit developed content, graphics and a social media strategy. A logo and colour scheme were also developed so that all committee output, promotional material and messages were consistent and recognisable. The logo’s design which featured a turtle in a red circular background with surrounding waves was symbolic: in Aboriginal art, turtles are symbolic of learning and education, and the circle surrounded by waves in the background depicts a resting place in a journey.

An initial step was the use of an online questionnaire which focused on the experiences of current students, former students, parents and school staff. The questionnaire was developed online via Survey Monkey portals and promoted on the committee’s website, by Members and through the Department’s use of social media. The questionnaire was not intended to be statistically significant, but rather to be a vehicle for stakeholder engagement to inform the committee’s consideration of issues and reporting to the House.

The committee recognised the value of developing contacts within the Indigenous education sector and harnessing their broader networks to promote participation in the inquiry. Secretariat staff attended a relevant conference and were able to disseminate information through people they met there. This use of intermediary networks is potentially very effective in facilitating communication.

The committee also recognised that, when seeking to engage the public, particularly those who do not normally engage with parliamentary committees, it is important to provide feedback and updates during the inquiry process. This is a way of keeping stakeholders engaged in the inquiry process. The committee is planning to provide updates or feedback to the community by:

- a rolling picture gallery of the committee's inspections in 2016
- updates or 'snapshots' from the Survey; and
- dissemination of this content through networks developed as part of the inquiry.

Other promotional and information strategies included:

- YouTube clips: access online via www.aph.gov.au/educationalopportunities
- Infographics - pictorial depictions of relevant statistics
- ongoing, timed newsletters themed around the school-year calendar - to provide stakeholders with updates about what's happening in the inquiry and the committee's activities
 1. December 2015 - End of year and release of Year 12 results
 2. February 2016 - Return to school
 3. April 2016 - School holidays
 4. Release of report - Release of committee's report and recommendations to the Government.

22. *Should experts be employed by committees on an ad hoc basis to contribute to the inquiry process?*

Where technical or specialist expertise is required for a committee inquiry, seconded resources are often sought on a temporary basis from the wider public service. The staffing costs of secondees are generally met by the home agency.

There are some committees such as the Joint Standing Committee on Foreign Affairs, Defence and Trade, the Parliamentary Joint Committee on Intelligence and Security and the Joint Standing Committee on Electoral Matters that have standing and ongoing arrangements with relevant agencies for secondees from relevant Defence and other government agencies.

Separate from these secondment arrangements, expert advisers can be engaged on occasions (eg, a specialist legal resource), but this happens rarely. They can be engaged on a retainer or paid on an hourly rate.

23. *Should committees have access to experts who can provide advice and assistance on the drafting of report recommendations?*

Our answer to question 22 refers.

Specialist advisers or secondees can assist with the preparation of a draft report, either by commenting on the secretariat's draft or by drafting some material themselves. The secretariat ensures that the adviser or secondee is familiar with the form and style required, and understands that the material to be prepared is based on the evidence received by the committee.

Where expert consultants are employed on a more limited basis, it may be more cost-effective for them to comment on the secretariat's draft report.

To enable consideration of the draft report by a relevant external expert or consultant, the committee authorises disclosure of the draft report and any related material to the expert or external consultant. Clear instructions are given by letter to any external person setting out the scope and purpose of their comments, and advising of confidentiality requirements.

24. *Are current staffing levels in the Committee Office sufficient to adequately support Legislative Council committees?*

In the Department of the House of Representatives, 20 investigative committees and the Standing Committee on Petitions are supported by the department's Committee Office, which comprises nine secretariats and the office of the Clerk Assistant (Committees), led by the Clerk Assistant (Committees). Seven secretariats support two committees each and two secretariats support three committees each. The standard committee secretariat is staffed by a secretary (Executive Band (EB) 2) who is secretary to two or three committees, an inquiry secretary for each committee (EB 1), a senior research officer and a research officer (Parliamentary Service Level (PSL) 6 and 4), and an office manager (PSL 4).

The secretariat supporting the Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT) and a second committee has several additional staff reflecting the size of the JSCFADT committee (32 members) and its operation through four sub-committees. There may also be a variety of temporary or part-time arrangements in committee secretariats including staff seconded from the wider public service, when a committee has a particularly busy program or a committee inquiry has particularly complex or technical subject matter.

The shared secretariat model was first introduced in 1996. In addition to being a response to the need to make savings (by reducing the number of EB 2 managers and administrative support staff), it also reflected a desire to enhance the role by giving committee secretaries (EB 2 officers) an increased management responsibility. The department's experience is that the shared secretariat approach has significantly increased the management responsibility of these jobs, and that there is a more devolved supervisory responsibility within the team with a greater emphasis on skills development. Inquiry secretaries have a closer relationship with committee members and the primary responsibility for report drafting. Further, a more senior administrative officer is now employed.

Shared secretariats assist in the management of workloads in that there is some smoothing of peaks and troughs as a result of the whole secretariat workload deriving from more than one committee. A culture of flexibility in staffing across secretariats in response to varying workloads is encouraged. While staff generally work within a single secretariat for the duration of a parliament, there is an expectation that staff will respond flexibly to support varying workload requirements.

Commencing in 1999, there was a significant period when many secretariats supported three committees. While the general thinking is that this is not a preferred structure, nevertheless, the three committee structure is used to assist with managing workloads, for example, when a select committee is suddenly established (as referred above, there

are two secretariats currently supporting three committees). The addition of a third committee to a secretariat would usually mean the recruitment of an additional inquiry secretary and research officer, with the roles of secretary and administrative support being provided from within the existing secretariat.