

**INQUIRY INTO PROCEDURAL FAIRNESS FOR INQUIRY
PARTICIPANTS**

Organisation: Parliament of Victoria

Name: Presiding Officers

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Submission to:
New South Wales Legislative Council
Privileges Committee
Inquiry into procedural fairness for inquiry participants

The Parliament of Victoria welcomes the opportunity to make this brief submission to the NSW Legislative Council Privileges Committee.

There is no legal duty for Victorian committees to treat inquiry participants according to the principles of procedural fairness. Despite this, our committees do take several measures to ensure participants receive fair treatment. These measures are similar to those in NSW.

1. Victorian committees are increasingly aware of procedural fairness

In principle, each committee determines the conduct of an inquiry. Statute or standing orders do not explicitly refer to procedural fairness.

However, committees increasingly try to conduct inquiries in ways consistent with principles of procedural fairness (as defined in the Discussion Paper). There are several reasons for this:

- Victorian committees have recently completed a number of inquiries which have involved collecting evidence containing allegations and adverse reflections (discussed further below).
- Committee evidence is published to the internet and therefore is now more public, more accessible and more enduring. Adverse reflections may have a greater negative impact on the reputations and interests of inquiry participants.
- Committee proceedings may be broadcast live on the internet, meaning there is more public visibility of committee proceedings.

It is also likely that committees perceive a link between procedural fairness and the legitimacy of committee reports. A committee's findings and recommendations are open to question in the public arena if the committee has not accorded a fair hearing to participants or sought to avoid bias.

2. Response to specific questions

The Committee has issued a discussion paper listing 6 questions. This submission addresses questions 2, 4 and 6.

Question 2: What procedural protections are observed in other Parliaments that would be appropriate for the New South Wales context? What are the sources of these procedures?

Response:

The Discussion Paper lists procedures that NSW Legislative Council committees observe to protect inquiry participants. 15 of the 16 procedures are equivalent to those our committees observe in the service of fairness, with differences largely a matter of nuance or minor variation in practice

For example, "Submission authors may request that their submission be made public but not published online" (page 3, dot point 7). Under the *Parliamentary Committees Act 2003* and Standing Orders, Victorian committees are required to take all evidence in public unless the committee

resolves otherwise.¹ By convention, this has included publishing all submissions online (subject to requests for confidentiality). It is rare for a submission to be public but not published online; however in special circumstances it has occurred.

Similarly, another procedure listed in the Discussion Paper is “Witnesses may request to be accompanied by, and may consult an adviser if the committee agrees”, with ‘adviser’ including a “legal adviser” (page 3 dot point 9). This would be permitted in Victoria (subject to the committee’s agreement), however a witness may not be represented by a lawyer unless both Houses agree.²

One of the listed procedures, “Submission authors who are unable to write a submission may request that the committee secretariat transcribe their submission for them” (page 3, dot point 2) has not occurred in Victoria. Committee staff often assist members of the public to make submissions by providing guidance on form, length and content. They generally do not get involved in writing a submission to ensure it is authored by and represents the views of the submitter and no other person. If a submitter made a request for assistance to transcribe a submission, this would be considered on a case by case basis.

Name withheld

Committees will consider a request from a submitter to withhold their name from a public submission (a ‘name withheld’ submission). The submission is published online with name and identifying details redacted. A policy governs the use of ‘name withheld’ submissions. It includes the following requirements:

- An allegation will only be accepted as part of a submission if it is relevant to the terms of reference; and
- An allegation against a person(s), accepted as evidence by a committee, cannot be made anonymously –an accused person(s) should know the identity of their accuser; and
- If a committee agrees to withhold the name of a submitter, the committee should only publish those parts of a submission which do not make specific allegations against a person(s) and those parts which do make such allegations should be held *in camera*.

The policy affirms the principle of procedural fairness that allegations should not be made anonymously.

Rights and responsibilities of witnesses

The Discussion Paper notes that Victoria has a document entitled *Appearing before a parliamentary committee: guidelines for the rights and responsibilities of witnesses*. As the Committee is aware of this document we will not reproduce it. However, we have reviewed the Guidelines while preparing this submission and each of the 20 points reflects current practice. The Committee has noted that the points go to the principles of procedural fairness.

Question 4: Have any cases arisen in other Parliaments which demonstrate the need for particular procedural protections in committee proceedings?

Response:

Most inquiries conducted by committees in Victoria examine policy issues or legislation. However, there have also been a small number of inquiries in recent years with a quasi-legal character, in so

¹ Parliamentary Committees Act 2003, s 28(2).

² Parliamentary Committees Act 2003, s 27(3).

far as the committees were required to conduct a document discovery process and examine potentially criminal matters. Such inquiries require careful attention to procedural fairness. Examples include:

- Inquiry into the Handling of Child Abuse by Religious and Other Organisations (tabled November 2013), and
- Inquiry into the Country Fire Authority Training Centre at Fiskville (tabled May 2016).

The Inquiry into the Handling of Child Abuse by Religious and Other Organisations received a considerable amount of evidence containing adverse reflections on individuals and organisations. It offered a right of reply to persons who were the subject of adverse reflections and this was exercised in writing or in oral evidence, at the discretion of the committee.

Question 6: What if any special considerations may be needed in inquiries by the Privileges Committee concerning possible contempts?

Response:

The Legislative Council Privileges Committee has never met, so has no body of practice in relation to this issue.

The Legislative Assembly Privileges Committee has conducted a few inquiries concerning alleged contempts by members or other individuals. The Committee has not adopted formal procedures regarding procedural fairness. In some of its more recent inquiries, the Committee has heard evidence in camera or not published submissions received to protect the person alleged to have committed the contempt until the Committee has made a finding on the matter. Depending on the circumstances, the Committee has also taken other measures to provide a degree of procedural fairness for the person who is alleged to have committed the contempt, such as inviting them to make a submission³ or inviting witnesses to give oral evidence to the Committee.⁴

3. Background: the Victorian parliamentary committee system

The Parliament of Victoria has a system of primarily Joint Investigatory Committees, established through the *Parliamentary Committees Act 2003*. There are 9 such committees, made up of members from both Houses and administered jointly by the Legislative Assembly and the Legislative Council.

The Legislative Council has three standing committees to oversee different portfolio areas.

From time to time Select Committees may be established by either House.

Each House has two domestic committees: Privileges Committee and Standing Orders Committee (Assembly); and Privileges Committee and Procedure Committee (Council).

³ Legislative Assembly Privileges Committee, *Inquiry in relation to recommendation 2 of the Ombudsman's report Whistleblowers Protection Act 2001: Investigation into allegations against Mr Geoff Shaw MP*, May 2014, p. 29.

⁴ Legislative Assembly Privileges Committee, *Report on the Complaint by the Member for Preston, July 2006* 2011, p. 3.