

INQUIRY INTO PROCEDURAL FAIRNESS FOR INQUIRY PARTICIPANTS

Organisation: ACT Legislative Assembly

Name: Mr Tom Duncan

Date received: 29 November 2017



The Hon Matthew Mason-Cox MLC
Committee Chair
Privileges Committee
Legislative Council of New South Wales
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Mason-Cox

Thank you for the opportunity to take part in your inquiry. I trust the information below is of assistance to you.

The powers of the ACT Legislative Assembly are conferred under the *Australian Capital Territory (Self-Government) Act 1988 (Cwlth)*, from which its privileges are directly linked to the *Parliamentary Privileges Act 1987 (Cwlth)*. Accordingly, witnesses appearing before the Assembly and its committees receive the same protection as that provided by the Commonwealth Parliament.

A comprehensive review of all standing orders was undertaken in 2008 and a new standing order, largely modelled on a similar Senate standing order was adopted which provided for the protection of witnesses, as well as providing for an adverse mention procedure to allow a "right of reply" procedure (which the Assembly had but which did not apply to committee proceedings).

I have attached standing order 264A for your information.

The Deputy Clerk and Serjeant-at-Arms will happily assist with any aspect you may like to discuss further. He can be contacted on 02 6205 0171 or via email at max.kiermaier@parliament.act.gov.au.

Yours sincerely

Tom Duncan
Clerk of the Legislative Assembly for the Australian Capital Territory

29 November 2017



ACT Legislative Assembly
Standing orders and continuous resolutions of the Assembly

Protection of witnesses – Adverse mention procedures

264A. In their dealings with witnesses, all committees of the Assembly shall observe the following procedures:

- (a) A witness shall be invited to attend a committee meeting to give evidence. A witness shall be summoned to appear (whether or not the witness was previously invited to appear) only where the committee has made a decision that the circumstances warrant the issue of a summons.
- (b) Where a committee desires that a witness produce documents relevant to the committee's inquiry, the witness shall be invited to do so, and an order that documents be produced shall be made (whether or not an invitation to produce documents has previously been made) only where the committee has made a decision that the circumstances warrant such an order.
- (c) A witness shall be given reasonable notice of a meeting at which the witness is to appear, and shall be supplied with a copy of the committee's terms of reference, a statement of the matters expected to be dealt with during the witness's appearance, and a copy of these procedures. Where appropriate a witness shall be supplied with a transcript of relevant evidence already taken.
- (d) A witness shall be given opportunity to make a submission in writing before appearing to give oral evidence.
- (e) Where appropriate, reasonable opportunity shall be given for a witness to raise any matters of concern to the witness relating to the witness's submission or the evidence the witness is to give before the witness appears at a meeting.
- (f) A witness shall be given reasonable access to any documents that the witness has produced to a committee.
- (g) A witness shall be offered, before giving evidence, the opportunity to make application, before or during the hearing of the witness's evidence, for any or all of the witness's evidence to be heard in private session, and shall be invited to give reasons for any such application. If the application is not granted, the witness shall be notified of reasons for that decision.
- (h) Before giving any evidence in private session a witness shall be informed whether it is the intention of the committee to publish or present to the Assembly all or part of that evidence, that it is within the power of the committee to do so, and that the Assembly has the authority to order the production and publication of undisclosed evidence.

- (i) A chair of a committee shall take care to ensure that all questions put to a witness are relevant to the committee's inquiry and that the information sought by those questions is necessary for the purpose of that inquiry. Where a Member of a committee requests discussion of a ruling of the Chair on this matter, the committee shall deliberate in private session and determine whether any question which is the subject of the ruling is to be permitted.
- (j) Where a witness objects to answering any question put to the witness on any ground, including the ground that the question is not relevant or that the answer may incriminate the witness, the witness shall be invited to state the ground upon which objection to answering the question is taken. Unless the committee determines immediately that the question should not be pressed, the committee shall then consider in private session whether it will insist upon an answer to the question, having regard to the relevance of the question to the committee's inquiry and the importance to the inquiry of the information sought by the question. If the committee determines that it requires an answer to the question, the witness shall be informed of that determination and the reasons for the determination, and shall be required to answer the question only in private session unless the committee determines that it is essential to the committee's inquiry that the question be answered in public session. Where a witness declines to answer a question to which a committee has required an answer, the committee shall report the facts to the Assembly.
- (k) Where a committee has reason to believe that evidence about to be given may reflect adversely on a person, the committee shall give consideration to hearing that evidence in private session.
- (l) Where a witness gives evidence reflecting adversely on a person and the committee is not satisfied that that evidence is relevant to the committee's inquiry, the committee shall give consideration to expunging that evidence from the transcript of evidence, and to forbidding the publication of that evidence.
- (m) Where evidence is given which reflects adversely on a person and action of the kind referred to in 264A(a) is not taken in respect of the evidence, the committee shall provide reasonable opportunity for that person to have access to that evidence and to respond to that evidence by written submission and appearance before the committee.
- (n) A witness accompanied by counsel shall be given reasonable opportunity to consult counsel during a meeting at which the witness appears.
- (o) An officer of a department of the Territory or the Commonwealth or a state shall not be asked to give opinions on matters of policy, and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a Minister.
- (p) Reasonable opportunity shall be afforded to a witness to make corrections of errors of transcription in the transcript of their evidence and to put before a committee additional material supplementary to their evidence.

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