



## Procedure and Privileges Committee

# *Changes to the Speaker's Procedural Rules: Enhancing Procedural Fairness*

Report No. 3  
December 2013

Legislative Assembly  
Parliament of Western Australia

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Deputy Chairman	Hon Michelle Roberts, MLA Member for Midland
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**Published by the Legislative Assembly, Parliament of Western Australia, Perth.  
December 2013.**

ISBN: 978-1-921865-84-8

(Series: Western Australia. Parliament. Legislative Assembly. Committees.  
Procedure and Privileges Committee. Report 3)

328.365

## Procedure and Privileges Committee

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# *Changes to the Speaker's Procedural Rules: Enhancing Procedural Fairness*

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**Report No. 3**

Presented by

**Ms Wendy Duncan, MLA**  
**Deputy Speaker of the Legislative Assembly**

Laid on the Table of the Legislative Assembly on 5 December 2013



## Changes to the *Speaker's Procedural Rules*: Enhancing Procedural Fairness

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The Procedure and Privileges Committee of the 38th Parliament inquired into and reported on the subject of enhancing procedural fairness for witnesses appearing before parliamentary committees and the House. In the course of its inquiry the Committee reviewed practice in other jurisdictions, met with parliamentary committees which had responsibility for matters of privilege and Members' ethics, and canvassed relevant legal issues with Mr Bret Walker SC and Professor Greg Craven.

In its report on this inquiry, tabled in June 2010, the Committee made a number of recommendations to improve procedural fairness for witnesses, particularly witnesses who had been subject to significant adverse references during the course of an inquiry or subject to significant adverse findings by a committee.

The House did not consider this report before the Parliament was dissolved.

Your Committee is of the view that the recommendations in this report to amend the *Speaker's Procedural Rules* whereby witnesses will be notified of significant adverse references and significant adverse findings made in the course of committee inquiries, and be provided with an opportunity to respond to these significant references and findings, will materially enhance procedural fairness for witnesses. Accordingly, your Committee re-endorses these recommendations and appends Appendix Three from the 2010 report which contains the *Speaker's Procedural Rules* with the proposed amendments underlined.



**Hon Michael Sutherland, MLA**  
**Chairman of the Committee**



**APPENDIX THREE**  
**SPEAKER'S PROCEDURAL RULES**  
**(AS PROPOSED TO BE AMENDED)**  
**AMENDMENTS UNDERLINED**

COMMITTEE EVIDENCE

(Standing Order No. 267)

**Part 1. Procedures for formal examination of witnesses**

Unless a variation is approved by the Speaker, all committees will observe the following procedures —

**Invitation to attend a committee meeting**

1. A witness will be invited to attend a committee meeting to give evidence. A witness will be summonsed 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.

**Production of relevant documents**

2. Where a committee requires documents relevant to the committee's inquiry, the witness will be invited to produce them, and a summons that documents be produced will 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 the issue of a summons.

**Procedure for notice of meeting**

3. A witness will be given reasonable notice of a meeting at which the witness is to appear, and will 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' appearance, and an information brochure on evidence procedures. Where the committee considers it appropriate a witness will be supplied with a transcript of relevant evidence already taken.

**Written submissions**

4. Where appropriate, a witness will be given an opportunity to make a submission in writing before appearing to give oral evidence.

**Access to documents by witnesses**

5. A witness will be given reasonable access to any documents that the witness has produced to a committee.

***In camera* evidence**

6. A witness will be made aware, before giving evidence, that the witness may apply for any or all of the witness' evidence to be heard *in camera*.

**Restriction on publication of *in camera* evidence**

7. Before giving *in camera* evidence a witness will be informed of the restriction on publication of such evidence and the potential for publication in the future.

**Relevance of questions to enquiry**

8. A chairman of a committee will ensure that all questions put to witnesses are relevant to the committee's inquiry. Where a Member of a committee requests discussion of a ruling of the chairman on this matter, the committee will deliberate in closed session and determine whether any question which is the subject of the ruling will be permitted.

**Objections to questions**

9. Where a witness objects to answering any question put to the witness, the witness will be invited to state the ground upon which the objection is taken. Unless the committee determines immediately that the question should not be pressed, the committee will then consider in closed 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 will be informed of that determination and will be required to answer the question. Where a witness declines to answer a question to which a committee has required an answer, the committee may report the facts to the Assembly.

**Evidence which may reflect adversely on a person or body**

10. Where a committee has reason to believe that evidence about to be given may reflect adversely on a person or body, the committee will give consideration to hearing that evidence in closed session or *in camera*.

**Written response to adverse evidence**

11. If a person or body requests an opportunity to respond to evidence given in open session which significantly reflects adversely on that person or body, an opportunity will be given to make a written submission and if the committee thinks fit, to have access to the evidence.

**Procedure for accompanying counsel**



12. A witness may make application to be accompanied by counsel and to consult counsel in the course of a meeting at which the witness appears. If the application is granted, the witness will be given reasonable opportunity to consult counsel during a meeting at which the witness appears. Counsel will not address the committee.

**Questions relating to matters of policy**

13. An officer of a department of the State or of the Commonwealth will not be asked to give opinions on matters of policy, and will be given reasonable opportunity to refer questions asked of the officer to superior officers or to a Minister.

**Corrections of errors in transcripts**

14. Reasonable opportunity will be afforded to witnesses 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.

**Improper influence and threats**

15. Where a committee has any reason to believe that any person may have been improperly influenced in respect of evidence which may be given before the committee, or may have 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 an attempt has been made to improperly influence a person or a person has been subject to or threatened with penalty or injury in respect of evidence which may be or has been given before the committee, the committee will report the facts and its conclusions to the Assembly.

**Notification of persons adversely referred to in committee inquiries**

16. If significantly adverse references are made against a person in the course of a committee inquiry, a committee will notify that person at the time the committee deems appropriate.

**Time for persons adversely referred to in committee inquiries to provide a response**

17. The committee will give a person a reasonable opportunity to provide a response.

**Notification of public proceedings**

18. A person who has been significantly adversely referred to in committee inquiries will be notified of relevant public committee proceedings in good time.

**Response to draft adverse findings**

19. If a person is the subject of significant adverse findings, a committee will provide a copy of the relevant draft findings and allow a person a reasonable period to respond to those findings.

**Opportunity to address on proposed penalty**

20. A person will be given an opportunity to address a committee either orally or in writing on any proposed penalty.

**Part 2. Procedures for formal examination of witnesses when using video-conferencing**

Unless a variation is approved by the Speaker, all committees will observe the following procedures when using video-conferencing to examine witnesses —

1. Video-conferencing may be used by a committee to examine a witness.
2. Committees may use video-conferencing only in exceptional circumstances; wherever possible witnesses will continue to personally appear before committees.
3. Audio only conference links will not be used for committee deliberative meetings or hearings.
4. Use of video-conferencing to take closed evidence from witnesses should only proceed once the committee is satisfied the transmission is secure and the closed evidence will not be overheard or recorded by an unauthorised person.
5. Subject to paragraph (4), the use of video-conferencing to take evidence from a witness outside of Western Australia will proceed only after appropriate warnings regarding parliamentary privilege and defamation have been provided in writing by either post, facsimile or email to the witness and the chairman is satisfied the witness has received the written warning and understood its implication for evidence about to be given.