



# ***PROCEDURE AND PRIVILEGES COMMITTEE***

## **PROCEDURAL FAIRNESS AND POWERS OF THE HOUSE**

**Report No. 8  
in the 38<sup>th</sup> Parliament**

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## **PROCEDURAL FAIRNESS AND POWERS OF THE HOUSE**

### **Report No. 8**

Presented by:  
**Mr Michael Sutherland, MLA**  
**Deputy Speaker of the Legislative Assembly**  
Laid on the Table of the Legislative Assembly  
on 24 June 2010



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## **COMMITTEE'S POWERS, FUNCTIONS AND TERMS OF REFERENCE**

Legislative Assembly Standing Order No. 284 provides the following functions, powers and terms of reference to the Procedure and Privileges Committee –

### **Procedure and Privileges Committee**

284.(1) A Procedure and Privileges Committee will be appointed at the beginning of each Parliament to –

- (a) examine and report on the procedures of the Assembly; and
- (b) examine and report on issues of privilege; and
- (c) wherever necessary, confer with a similar committee of the Council.

(2) Membership of the committee will consist of the Speaker and four other Members as the Assembly appoints.

(3) Standing Order 278 will apply except that where possible any report of the committee will be presented by the Deputy Speaker.

(4) When consideration of a report from the committee is set down as an order of the day it will be considered using the consideration in detail procedure.



## Background

The Procedure and Privileges Committee (PPC) has undertaken a number of investigations relating to potential or actual breaches of privilege and contempt of Parliament in recent years.<sup>1</sup> Because such investigations may initially or at some point in the investigation involve accusations against individuals, it is important that to the extent possible, procedural fairness is followed in relation to witnesses appearing before the PPC in such investigations. As the PPC has no active investigation at present, it is timely to review the procedures of committees and the House in relation to investigations involving persons who are considered to have committed a significant wrongdoing in order to determine whether there are procedures which can be improved or adopted in order to address matters of procedural fairness.

It is also important to consider the penalties that the House has, or should have, to defend itself against conduct which undermines the proper exercise of the House's legislative and other functions.

In the course of considering these matters, the Committee met with the Standing Committee on Privileges and Members' Interests at the House of Representatives, the Parliament of New South Wales' Standing Committee on Privileges and Ethics of the Legislative Assembly and the Privileges Committee of the Legislative Council. The Committee also discussed relevant issues with Mr Bret Walker, SC,<sup>2</sup> and Professor Greg Craven.<sup>3</sup> The Committee thanks each of these parties for their valuable opinions and insights into contempt, procedural fairness and other relevant matters.

### ***Procedural fairness***

Procedural fairness in relation to adversarial court proceedings describes the conditions desirable for an investigation to have a fair outcome. These conditions include:

- adequate notice being given to accused persons;
- only relevant matters to be considered in investigation;

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<sup>1</sup> See for example *Inquiry into Allegations Associated with the Removal of 'The Cliffe' from the State Register of Heritage Places*, September 2009; *Inquiry into the Member for Murchison-Eyre's Unauthorised Release of Committee Documents and Related Matters*, June 2007.

<sup>2</sup> Bret Walker, SC, is one of Australia's leading barristers. He is past president of the NSW Bar Association and the Law Council of Australia, and is editor of the NSW Law Reports. He has provided advice to the Privileges Committee of the Senate, the Legislative Council of New South Wales and the Legislative Council of Victoria on a variety of matters pertaining to parliamentary privilege and the powers and immunities of Parliament.

<sup>3</sup> Professor Greg Craven, B.A., LL.B., LL.M., was the Foundation Dean at the School of Law, Notre Dame University, Fremantle, and has also held the position of Professor of Government and Law at Curtin University and Reader in Law at Melbourne University. He served as Crown Counsel to the Victorian Government from 1992-95. He is Vice Chancellor of the Australian Catholic University, Sydney.

- decision-makers being unbiased and acting with good faith; and
- the opportunity for the accused to respond.

Such considerations are particularly important issues for privileges committees, and indeed for other committees when accusations are made against individuals or organisations. While standing and select committees are not usually placed in a position of recommending penalties in relation to individuals or organisations, the publicity associated with their inquiries and recommendations can have a significant effect on individuals and organisations. Nevertheless, these issues are most frequently brought to light by the procedures of privilege committees, which investigate Members of Parliament and members of the public in relation to contempt, often in highly publicised circumstances.

Matters of procedural fairness have recently been reported on by the House of Representatives' Standing Committee on Privileges and Members' Interests, and new procedures adopted by the House in November 2009. In response to a request by the House of Representatives' Committee of the 41<sup>st</sup> Parliament, constitutional and parliamentary law academics Professors Geoffrey Lindell and Gerard Carney produced a paper in February 2007 which outlined possible measures the House of Representatives and its privileges committee might adopt to ensure procedural fairness principles were applied to witnesses before the committee.

Although Professors Lindell and Carney consider that it is 'not possible for the House or its committees to accord procedural fairness for those accused of serious contempt at the level which contemporary standards of justice require',<sup>4</sup> they made a series of recommendations which the House of Representatives considered, before adopting procedures for the examination of witnesses in November 2009.<sup>5</sup> Their recommendations will be examined in detail later in this report.

### ***Penalties in the Legislative Assembly of Western Australia***

The current range of penalties available to the House is limited by the *Parliamentary Privileges Act 1891*, the Standing Orders and precedent. The Legislative Council of Western Australia's Select Committee of Privilege, in its November 2007 special report *Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations*,<sup>6</sup> examined the provisions for penalties for contempt of Parliament in a Western Australian context. In summary, the Council committee suggested that the range of penalties for contempt for Members of Parliament included:

- the imposition of a fine, as provided for in section 8 of the *Parliamentary Privileges Act 1891*;

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<sup>4</sup> Carney, G and Lindell, G, 'Review of Procedures of the House of Representatives Relating to the Consideration of Privilege Matters and Procedural Fairness', February 2007, pp1-2.

<sup>5</sup> see Albanese, A., Leader of the House, Parliament of Australia, House of Representatives, *Parliamentary Debates* (Hansard), 25 November 2009, pp12890-12891.

<sup>6</sup> Select Committee of Privilege, *Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations*, Legislative Council, Western Australia, November 2007; tabled 13 November 2007.

- suspension, as part of a House’s ‘inherent ability to regulate and discipline its own membership’, although possibly not without pay;<sup>7</sup>
- expulsion;
- reprimand and admonition;
- censure;
- imprisonment;
- seeking an apology;
- exclusion from the precincts of Parliament.<sup>8</sup>

In relation to punishment for non-members, the Council committee was of the view that the House’s powers were limited to ‘relatively light’ punishments in most cases, such as ordering an apology in writing or at the bar of the House; reprimand, admonishment or censure at the bar of the House; or banning offending persons from the precincts of Parliament. More serious punishments included imprisonment under section 1 of the *Parliamentary Privileges Act 1891* in the case of serious contempt, or directing the Attorney General to prosecute any contempt which is punishable by law pursuant to section 15 of the *Parliamentary Privileges Act 1891*.<sup>9</sup> The Council’s report recommended ‘urgent action’ by the Legislative Council to ‘expand (or clarify) [its] punitive powers’.<sup>10</sup>

In addition, the Council noted that the *Criminal Code* (Western Australia) contains a number of offences ‘that would also be considered contempts of the Parliament’, and which ‘sit somewhat uncomfortably in the context of parliamentary privilege’.<sup>11</sup>

Your Committee concurs in large measure with those expressed views while noting that there are some differences of view in relation to such matters as the extent of the power to fine and suspension without pay.

The *Parliamentary Privileges Act 1891* applies equally to the Legislative Assembly, although the Standing Orders in relation to fining are different. Standing Order 55 provides that if a person is

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<sup>7</sup> Select Committee of Privilege, *Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations*, Legislative Council, Western Australia, November 2007, pp 27 and 31-33.

<sup>8</sup> A full discussion of these penalties is contained in the Select Committee of Privilege, *Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations*, Legislative Council, Western Australia, November 2007, pp23-42.

<sup>9</sup> Select Committee of Privilege, *Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations*, Legislative Council, Western Australia, November 2007, pp 41-42.

<sup>10</sup> *Ibid.*, p v.

<sup>11</sup> *Ibid.*, p 38.

declared guilty of contempt for an offence specified in section 8 of the *Parliamentary Privileges Act 1891*,<sup>12</sup> they may be fined a penalty:

of such amount as the Assembly orders, and if the fine is not immediately paid, the offender may be imprisoned in the custody of the Sergeant-at-Arms, in such place within the State as the Assembly directs, until the fine is paid, or until the end of the then existing session or such lesser period as the Assembly orders.

However, if the contempt is not one described in section 8 of the *Parliamentary Privileges Act 1891*, the House is limited by Standing Order 56 to imposing a fine 'not exceeding one hundred dollars'. If the fine is not paid, the person may be committed to the custody of the Sergeant-at-Arms 'in such a place within the State as the Assembly directs' for a period not exceeding fourteen days. The Procedure and Privileges Committee's view, which will be discussed further below, is that the provisions in relation to fines are inadequate.

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<sup>12</sup> Parliamentary Privileges Act 1891, s 8:

Disobedience to any order of either House or of any Committee duly authorised in that behalf to attend or to produce papers, books, records, or other documents, before the House or such Committee, unless excused by the House in manner aforesaid.

Refusing to be examined before, or to answer any lawful and relevant question put by the House or any such Committee, unless excused by the House in manner aforesaid.

The assaulting, obstructing, or insulting any Member in his coming to or going from the House, or on account of his behaviour in Parliament or endeavouring to compel any Member by force, insult, or menace to declare himself in favour of or against any proposition or matter depending or expected to be brought before either House.

The sending to a Member any threatening letter on account of his behaviour in Parliament.

The sending a challenge to fight a Member.

The offering of a bribe to, or attempting to bribe a Member.

The creating or joining in any disturbance in the House, or in the vicinity of the House while the same is sitting, whereby the proceedings of such House may be interrupted.

## Procedural fairness and the House of Representatives

On 23 February 2007, Professors Geoffrey Lindell and Gerard Carney presented a paper to the Standing Committee on Privileges of the House of Representatives which reviewed ‘the procedures relating to the consideration of privilege matters in the House of Representatives having regard to issues of natural justice and procedural fairness’ and making ‘suggestions for changes to existing procedures’.<sup>13</sup> Lindell and Carney stated at the outset that the House of Representatives and its privileges committee were not bound in law to comply with the rules of procedural fairness that apply to administrative bodies and tribunals, nor was it possible for the House or the committee to adhere to such rules.<sup>14</sup> Because of this, the authors suggested a range of measures that would bring the House or Representatives and its privileges committee closer to a standard of procedural fairness as practised by the courts. These were covered under the following broad areas:

1. Transferring the penal jurisdiction of the House of Representatives to the courts;
2. Having the House of Representatives adopt a range of guidelines for the privileges committee to ‘provide a high level of procedural fairness when investigating and determining allegations of contempt’;<sup>15</sup> and
3. Recommending that the House of Representatives adopt procedures for dealing with reports from the privileges committee on matters of contempt.

Detailed commentary and conclusions in relation to the latter two areas will be considered later in this report.

The privileges committee of the 42<sup>nd</sup> Parliament, now known as the Committee of Privileges and Members’ Interests, released a discussion paper in October 2008, which sought feedback from the secretariat of the House of Representatives’ committee, as well as feedback from the Clerk and the Deputy Clerk of the House of Representatives, on Lindell and Carney’s 2007 recommendations. The October 2008 report also sought wider comment on the proposed procedures for witness protection in order to allow the committee to finalise its recommendations to the House of Representatives.<sup>16</sup> The Chair’s introduction to the report noted that while the Clerk and Deputy Clerk ‘did not support the transfer of the penal jurisdiction of the House of Representatives from the House to the courts’, they did support ‘appropriate procedures for the Committee of Privileges and Members’ Interests to ensure the protection of procedural fairness and natural justice and considered the procedures proposed in the secretariat paper were reasonable’.<sup>17</sup>

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<sup>13</sup> Carney, G and Lindell, G, ‘Review Of Procedures Of The House Of Representatives Relating To The Consideration Of Privilege Matters And Procedural Fairness’, February 2007, p1.

<sup>14</sup> Ibid., pp1-2.

<sup>15</sup> Ibid., p2.

<sup>16</sup> Standing Committee on Privilege and Members Interests, *Review of the Procedures of the Committee*, Commonwealth of Australia, Canberra, October 2008, see pp7-8.

<sup>17</sup> Ibid., p8.

In September 2009, the Committee of Privileges and Members' Interests delivered a report on proposed procedures in relation to consideration of privilege matters and procedural fairness, and recommended that the House adopt the proposed procedures.<sup>18</sup>

The procedures were adopted by the House on 25 November 2009,<sup>19</sup> and are reproduced at Appendix Two. The approach taken by your Committee has taken into account these procedures.

In the next section, the existing provisions of the Legislative Assembly in relation to the examination of witnesses will be examined against Lindell and Carney's recommendations, and conclusions put forward in relation to whether or not the procedures should be altered.

## **Consideration of Lindell and Carney's recommendations in relation to the examination of witnesses in the committees of the Legislative Assembly of Western Australia**

### ***Existing processes***

The Legislative Assembly possesses considerable powers and protections under the law of parliamentary privilege. Some of the law is codified in legislation, and some is imported into Western Australian law from the law applicable to the UK House of Commons.<sup>20</sup> Committees, as creatures of the House, also have certain powers and immunities, which include requiring the appearance of witnesses and compelling the production of documents.<sup>21</sup> The law has evolved to ensure that the proper functioning of Parliament and its committees is supported, and that Parliament is able to obtain the information necessary for its lawmaking and inquiry processes.

Section four of the *Parliamentary Privileges Act 1891* provides the statutory basis for the attendance of persons before the House or its committees, and for the House to send for papers and records.<sup>22</sup> Standing Order 264 provides the House's authorisation for every committee to

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<sup>18</sup> Standing Committee on Privilege and Members Interests, *Procedures of the Committee and the House in Relation to Consideration of Privilege Matters and Procedural Fairness*, Commonwealth of Australia, Canberra, September 2009.

<sup>19</sup> Albanese, A., Leader of the House, Parliament of Australia, House of Representatives, *Parliamentary Debates* (Hansard), 25 November 2009, pp12890-12891.

<sup>20</sup> see *Parliamentary Privileges Act 1891* (Western Australia); *Constitution Act 1889*; *Constitution Acts Amendment Act 1889*.

<sup>21</sup> *Parliamentary Privileges Act 1891*, ss4-5.

<sup>22</sup> Section 8 of the *Parliamentary Privileges Act 1891* also provides for the House to fine for contempt in the event of a witness refusing to produce requested 'papers, books, records, or other documents' or in the event of a witness refusing to either appear before a committee or to answer 'any lawful and relevant question'.<sup>22</sup> In the event of a witness being unable to pay a fine determined by the House, the section provides for the imprisonment of a witness 'as the House may direct until such fine shall have been paid, or until the end of the then existing session or any portion thereof'.<sup>22</sup> While power to imprison has not been exercised by the Legislative Assembly since November 1904, the potential for a fine to be imposed, or imprisonment to attend upon failure to pay such a fine, may cause anxiety in witnesses, particularly where there is no requirement for the House to follow procedures of natural justice.



send for persons, papers and records as necessary.<sup>23</sup> Section five of the *Parliamentary Privileges Act 1891* provides the statutory basis for persons to be summonsed to attend the House or its committees, and Standing Order 265 similarly provides the authorisation for committees to exercise this power as necessary.<sup>24</sup>

The existing procedures for the examination of witnesses in the Legislative Assembly's committees are set out in the Speaker's Procedural Rules, which are provided for in Standing Order 267. The Speaker's Procedural Rules are reproduced in Appendix One.

## ***Lindell and Carney's Recommendations***

In this section your Committee considers the specific resolutions proposed by Lindell and Carney in 2007 for adoption by the House of Representatives; provides commentary from a Western Australian perspective; and reaches a conclusion in relation to each recommendation.

### **Accused persons and suspects**

#### **Lindell and Carney Recommendation 1<sup>25</sup>**

**All committee hearings should be held in public subject to a discretion to hear evidence in private in appropriate cases.**

**Commentary:** This is already the practice of the Legislative Assembly's committees, including the Procedure and Privileges Committee. However, it should be recognised that because of the nature of some Procedure and Privileges Committee investigations, and particularly the risk of untested allegations in relation to Members and others being circulated by the media, the benefit of hearings being conducted in public needs to be weighed carefully against the potential unwarranted damage to reputations or interests.

**Conclusion:** No change to the current practice in the Western Australian Legislative Assembly is necessary.

#### **Lindell and Carney Recommendation 2**

**A transcript of all evidence presented to the committee should be published as soon as possible, subject to a discretion to withhold evidence taken in private. The transcript should also be presented to the House with the committee's report.**

**Commentary:** While this is already the practice of the Legislative Assembly's committees, the PPC considers that the publication of transcripts concerning the conduct of a Member of Parliament, a member of the public or a corporation should be treated differently from those concerned with public policy. As an example, in order not to contaminate evidence yet to be

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<sup>23</sup> Standing Order 264: 'A committee has power to send for persons, papers and records'.

<sup>24</sup> Standing Order 265: 'If resolved by the committee, the Chairman will authorise the Clerk of the Assembly to summon a witness to be examined by the committee'.

<sup>25</sup> Note: this numbering is for ease of reference, and does not reflect the numbering in the original.

given, the PPC may decide that certain evidence should not be released before other evidence is given.

It is worth observing that Lindell and Carney's arguments derive from assumptions made about the desirability of procedural fairness procedures as practised in adversarial systems of justice. The inquisitorial nature of PPC inquiries is significantly different from adversarial systems but that does not mean it is inappropriate.

**Conclusion:** No change to the current practice in the Western Australian Legislative Assembly is necessary.

### **Lindell and Carney Recommendation 3**

**Committee members should be disqualified for apparent bias.**

**Commentary:** There is no formal requirement in the Standing Orders for committee members to absent themselves from committee meetings in the event that there is real or perceived bias in relation to the subject matter of an inquiry or the examination of a witness.

Standing Order 254 provides that a Member will not participate in a committee if the Member has a direct pecuniary interest in the matters being investigated by the committee, unless the interest has been declared in the Assembly. There are several ways a 'declaration' can be made, including by way of the Member's financial return, a personal explanation in the House or in debate on a particular matter. It is the responsibility of an individual Member to declare such a pecuniary interest.

Where a Member has another type of interest in a matter under inquiry, practice has been that the Member declares the interest, and the committee and the Member consider what action (if any) is to be taken. If the association is considered to be such that it warrants the Member's exclusion from committee proceedings pertaining to that matter, the Member may voluntarily exclude him or her self from these proceedings or the committee may report this matter to the Assembly for its consideration—a committee cannot vote to exclude a Member from its proceedings.

There have been a number of instances where Members have excluded themselves from inquiries, or declared interests, either in their committees or in the Legislative Assembly. As an example, the Hon Mark McGowan voluntarily excluded himself from your Committee's *Inquiry into Matters Associated with the Removal of 'The Cliffe' from the State Register of Heritage Places* in August 2009, as he was of the opinion that as he had prosecuted the case for the inquiry in the House, it was inappropriate that he should also be involved in the investigation.<sup>26</sup> In another instance, when John McGrath was appointed as Chair of the Joint Standing Committee on the Review of the Racing and Wagering Western Australia Acts Committee, he declared his interest in the racing industry 'as a breeder, as an owner and as a hobby trainer'.<sup>27</sup> It is appropriate for the

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<sup>26</sup> See M.W. Sutherland, Deputy Speaker, Legislative Assembly, Western Australia, *Parliamentary Debates* (Hansard), 17 September 2009, pp 7251b-7254a.

<sup>27</sup> J.E. McGrath, Legislative Assembly, Western Australia, *Parliamentary Debates* (Hansard), 24 September 2010, p 7710d.

committee and the Member to consider on a case-by-case basis whether the Member ought to recuse themselves or not.

It should be noted that Members of Parliament are elected because they hold a range of views, and that it is neither possible nor desirable for Members to contend that they are disinterested parties. That does not mean that they cannot, together with their colleagues, properly weigh evidence or recommend appropriate penalties.

**Conclusion:** No change to the current practice in the Western Australian Legislative Assembly is recommended.

#### **Lindell and Carney Recommendation 4**

**Any person who is the subject of proposed investigation by the committee must be notified in advance of the specific nature of the allegations made against them, preferably formulated as a specific charge, or if this is not possible, of the general nature of the issues being investigated, in order to allow them to respond.**

**Commentary:** The Procedure and Privileges Committee indicates to a witness evidence which would indicate wrongdoing on their behalf, or this may be clear from the terms of reference or the nature of the inquiry. Although there may be no formulation of a specific charge, a witness is nevertheless made aware of the precise nature of the allegations made against them.

**Conclusion:** It is recommended that in the event of significant adverse allegations being made against a person, that all Legislative Assembly committees notify that person of the allegations that have been made against them at the time the committee deems appropriate.

#### **Lindell and Carney Recommendation 5**

**Persons charged with specific allegations against them must be given a reasonable time to prepare their response.**

**Commentary:** The practice of the Procedure and Privileges Committee has varied according to circumstances. If there are specific allegations made then reasonable time is given for preparation of a response. That does not preclude, however, the prospect that the PPC may wish to hear a witness' version of events before deciding whether allegations will be pursued. This is harder to provide for with oral evidence, where a question might be put to a witness in relation to evidence which has just been given.

**Conclusion:** It is recommended that in the event of specific allegations being made against a person, that all Legislative Assembly committees allow a person reasonable time to prepare their response.

#### **Lindell and Carney Recommendation 6**

**Right of the accused to be present throughout whole proceedings, save for deliberative sessions and subject to a discretion to exclude when proceedings held in private.**

**Commentary:** Committees should continue to determine whether evidence is public or private, and when public evidence to be taken, information is provided on the committee website, and the media is notified. A committee will make a decision whether to notify individuals when certain matters are held in public session. However, if a person is considered to have committed a significant wrongdoing, committees should notify such a person of public hearings.

It should be noted that often there may be no individual accused person but rather a range of possibilities and persons who may have been involved. The inquisitorial nature of committee inquiries is of significant advantage to the PPC in this situation.

**Conclusion:** If there is a person who is considered to have committed a significant wrongdoing, they should be made aware of relevant public proceedings in good time.

#### **Lindell and Carney Recommendation 7**

##### **Right of the accused person to adduce evidence.**

**Commentary:** A committee inquiry is not an adversarial procedure, and it is the committee itself which will determine the paths of inquiry that are followed. It is, however, open to any other person to suggest lines of inquiry or sources of evidence.

**Conclusion:** No change to the current practice in the Western Australian Legislative Assembly is recommended.

#### **Lindell and Carney Recommendation 8**

##### **Right of accused person and other witnesses to cross examine witnesses.**

**Commentary:** As noted previously, committee hearings are investigative and inquisitorial, not adversarial, in nature: allowing ‘accused’ persons and witnesses to cross-examine witnesses is not appropriate in these circumstances. It is the view of your Committee that witnesses should not have the same powers as committee members, particularly given the nature of Procedure and Privilege Committee inquiries, and the powers of parliamentary committees. It is open to any accused person or witness to submit further material to a committee if they wish.

**Conclusion:** No change to the current practice in the Western Australian Legislative Assembly is recommended.

#### **Lindell and Carney Recommendation 9**

##### **Right to an accused person to address the committee upon conclusion of all evidence, and the right of any person to respond to any draft adverse findings.**

**Commentary:** A committee will determine whether it is appropriate or necessary for a person to address a committee upon the conclusion of all evidence. Amongst the factors in this consideration: the seriousness of potential findings, and potential for a penalty to be applied. The PPC does not consider that the right of an ‘accused’ person to address the committee upon the conclusion of all evidence should be automatically extended in all circumstances.

In relation to a person having a right to respond to any significant draft adverse findings, the PPC considers that a reasonable period should be extended to allow the opportunity for this to occur.

**Conclusion:** Committees should allow a reasonable period to enable a person to respond to significant draft adverse findings.

#### **Lindell and Carney Recommendation 10**

##### **Right of accused to address the committee in relation to penalty.**

**Commentary:** At the time a person who is considered to have committed a significant wrongdoing is given draft adverse findings, it may be that a committee provides the person with the proposed penalty or range of penalties. A committee may not make any decision until the draft findings have been responded to. It should normally allow a person to address it on penalty, depending on the likely severity of the penalty.

**Conclusion:** A committee should normally allow a person to address it on penalty, depending on the likely severity of the penalty.

#### **Lindell and Carney Recommendation 11**

##### **Right of accused to full legal representation.**

**Commentary:** Under the Speaker's Procedural Rules (12), all witnesses may apply to a committee to be accompanied by counsel. This is not full representation, however: an accused person may consult counsel, but counsel may not address the committee. Your Committee considers that full representation is not appropriate in an inquisitorial process.

**Conclusion:** No change to the current practice in the Western Australian Legislative Assembly is recommended.

#### **Lindell and Carney Recommendation 12**

##### **Provision made for committees to authorise payment of legal representation and other expenses.**

**Commentary:** While it retains the potential capacity to do so, the practice of the Legislative Assembly is not to pay for legal representation, as the inquiry mode is not adversarial.

**Conclusion:** No change to the current practice in the Western Australian Legislative Assembly is recommended.

### **Protecting third parties**

#### **Lindell and Carney Recommendation 13**

**Third parties [should] be given notice of, and be afforded the opportunity to, refute any adverse or disparaging remarks made about them. This could be done by affording them the kind of protections afforded in suggestions 7 and also 9.**

**Commentary:** This is already the practice of the Legislative Assembly's committees, including the Procedure and Privileges Committee, where the Committee deems it appropriate. It may be, for example, that some disparaging comments are purely vexatious: if there is no compulsion upon a committee to publish evidence, such remarks do not need to be re-circulated. Committees themselves should be careful not to allow witnesses to use the committee's procedures as a platform for unrestrained and patently baseless or careless accusations.

**Conclusion:** No change to the current practice in the Western Australian Legislative Assembly is recommended.

#### **Lindell and Carney Recommendation 14a**

**Third parties should continue to be allowed to have access to their legal representatives.**

**Commentary:** This is provided for under the Speaker's Procedural Rules (12).

**Conclusion:** No change to the current practice in the Western Australian Legislative Assembly is recommended.

#### **Lindell and Carney Recommendation 14b**

**Third parties only have, at the discretion of the committee, the following rights either personally or through their legal representatives to:**

**(i) adduce evidence by calling witnesses;**

**Commentary:** As committee hearings are not adversarial, it is the view of your Committee that witnesses should not have the same powers as committee members, particularly given the nature of Procedure and Privilege Committee inquiries, and the powers of parliamentary committees.

**Conclusion:** No change to the current practice in the Western Australian Legislative Assembly is recommended.

**(ii) examine and cross examine witnesses; and also**

**Commentary:** As committee hearings are not adversarial, it is the view of your Committee that witnesses should not have the same powers as committee members, particularly given the nature of Procedure and Privilege Committee inquiries, and the powers of parliamentary committees.

**Conclusion:** No change to the current practice in the Western Australian Legislative Assembly is recommended.

**(iii) be paid out of public funds some or all the costs they incur for any legal representation they engage in relation to the proceedings.**

**Commentary:** While it retains the potential capacity to do so, the practice of the Legislative Assembly is not to pay for legal representation, as the inquiry mode is not adversarial.

**Conclusion:** No change to the current practice in the Western Australian Legislative Assembly is recommended.

#### **Lindell and Carney Recommendation 15**

**The committee ensures that evidence containing adverse comment or disparaging remarks is not taken in public or otherwise made public in any way, although it may wish to warn the person, against whom the remarks were directed, that the person making those remarks has the protection of parliamentary privilege and so could not be sued for making them.**

**Commentary:** A committee cannot entirely prevent adverse or disparaging remarks in open session. Holding evidence in closed session prevents the publicising of such remarks. It is also open to a committee to make recommendations to the House in respect of a witness who has abused parliamentary privilege by using the committee's processes in an attempt to visit unwarranted harm on third parties.

**Conclusion:** No change to the current practice in the Western Australian Legislative Assembly is recommended.

### **The House**

#### **Lindell and Carney Recommendation 16**

**The report from the Privileges Committee should include the full transcript of the evidence of its proceedings.**

**Commentary:** This is the practice of the Legislative Assembly's committees, subject to the resolution of the committee, except in relation to *in camera* evidence. Closed evidence, which is evidence not taken in public, but which is not *in camera*, should also be tabled unless there is a good reason not to do so.<sup>28</sup>

**Conclusion:** No change to the current practice in the Western Australian Legislative Assembly is recommended.

#### **Lindell and Carney Recommendation 17**

**Seven sitting days notice to be given for any motion for finding contempt and for imposing any sanction for contempt, except when earlier prorogation or dissolution is to occur.**

**Commentary:** If there is a requirement that a motion regarding a matter of contempt is delayed until seven sitting days after a report has been tabled, this may mean that there is a significant delay in dealing with the matter, perhaps up to a month, depending on the sitting schedule. There

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<sup>28</sup> Evidence taken in a closed session may only be published or disclosed if the evidence has been reported to the Assembly or that disclosure has been authorised, on motion, by the committee. *In camera* evidence is taken in private or in secret. Evidence or documents taken *in camera* will not be published or disclosed by the committee unless the documents have been in the custody of the Clerk for at least 30 years and in the opinion of the Speaker it is appropriate that such evidence or documents be disclosed, or the witness or provider of the documents gives written approval.

will be political imperatives to deal quickly with an issue, and your Committee finds that an obligatory delay of this nature may well create its own difficulties. Your Committee is of the view that it is desirable that there be at least two days, including the day of tabling, between the presentation of a Procedure and Privileges Committee report containing recommendations for findings of contempt and its consideration in the House, but this should not be mandatory. As an example, the House may well feel obliged to deal with one of its own Members quickly, and should not be prevented from doing so.

**Conclusion:** Your Committee recommends that there should be at least two days between the tabling of a Procedure and Privileges report containing recommendations for findings of contempt and the consideration of that report in the House.

### **Lindell and Carney Recommendation 18**

**If the House wishes to consider further evidence not previously provided to the Privileges Committee, the accused must be given an opportunity to respond to that evidence.**

**Commentary:** In the unlikely event that the House receives evidence which a committee has not, the House should judge the nature of the evidence before making a decision on whether it merits a response from a witness or an accused person. The evidence may be repetitive, vexatious, or of a minor nature, and the House should be free to make a judgement in relation to this.

**Conclusion:** In the unlikely event that the House receives evidence which a committee has not, the House should judge the nature of the evidence before making a decision on whether it merits a response from a witness or a person considered to have committed a significant wrongdoing.

### **Lindell and Carney Recommendation 19**

**Opportunity for the accused person to address the House on any proposed punitive penalty.**

**Commentary:** A person will already have had an opportunity to address the committee, and the House will remain free to impose other penalties. Your Committee supports the opportunity for persons about whom recommendations have been made to the House that they be found guilty of contempt or breach of privilege to provide a written statement to the House, via the Speaker.

**Conclusion:** If the PPC has recommended to the House that a person is found guilty of contempt or breach of privilege, that person should have an opportunity to provide a written statement to the Speaker for presentation to the House.

### **Lindell and Carney Recommendation 20**

**The House should not impose a penalty which exceeds that recommended by the Privileges Committee.**

**Commentary:** The Legislative Assembly has the power to impose penalties on those it finds in contempt. A recommendation of a committee cannot bind the House in any respect, and it should always be the responsibility of the House, and not a committee, to determine appropriate penalties and resolutions in relation to contempt and breach of privilege.



**Conclusion:** No change to the current practice in the Western Australian Legislative Assembly is recommended.

**Lindell and Carney Recommendation 21**

**The House should not overturn a finding of no contempt by the Privileges Committee.**

**Commentary:** The Legislative Assembly has the power to find contempt or not. A committee can recommend that a contempt be found by the House but cannot make that finding itself. It should always be the responsibility of the House, and not a committee, to determine contempt and breach of privilege.

**Conclusion:** No change to the current practice in the Western Australian Legislative Assembly is recommended.

**Lindell and Carney Recommendation 22**

**Any Member who initiated the allegation of contempt ought to refrain from voting on any motions finding contempt or imposing any penalty.**

**Commentary:** Unless a Member is suspended from the service of the House, there is no provision in the Constitution for the House to prevent a validly elected, sworn-in Member of Parliament present in the House from voting on any resolution. Members of Parliament are entitled to vote on any resolution but can if they wish absent themselves from the chamber if a division is called. The initiation of an inquiry does not incapacitate that Member from considering the report from the committee and making a determination on the evidence accordingly.

**Conclusion:** No change to the current practice in the Western Australian Legislative Assembly is recommended.

***Summary: recommendations for the procedures of the committees in dealing with witnesses adversely referred to in committee reports***

Your Committee is of the view that a House needs to retain the ability to deal with matters of contempt, and rejects the suggestion that the courts should be in any way involved in proceedings concerned with contempt of Parliament. Lindell and Carney's recommendations were not supported in this respect by the House of Representatives, nor should the adversarial model of investigation be taken as the only way to properly deal with these matters. Parliament is an independent body, and it ought not to weaken itself on the argument that only adversarial systems can produce justice.

Nevertheless, your Committee considers that the procedures below would afford an appropriate measure of protection for witnesses and others called before committees in contempt proceedings, or other proceedings where adverse findings are made against individuals:

**Recommendation 1**

That in the event of specific allegations being made against a person in the course of a committee inquiry, all Legislative Assembly committees will notify persons who are significantly adversely referred to of those references at the time the committee deems appropriate.

**Recommendation 2**

That in the event of specific allegations being made against a person, all Legislative Assembly committees allow a person a reasonable time to prepare their response.

**Recommendation 3**

That if a person is considered to have committed a significant wrongdoing, they should be made aware of relevant public proceedings in good time.

**Recommendation 4**

That 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.

**Recommendation 5**

That a person be given the opportunity to address a committee on any proposed penalty.

**Recommendation 6**

That the Speaker's Procedural Rules be amended to include the recommendations above, and be adopted by the House in the form set out in Appendix Three.

**Recommendation 7**

That the following should be adopted as Standing Order 57(1):

**Consideration of report containing findings of contempt**

57. (1) Unless the House otherwise resolves, there will be at least two days, including the day of tabling, between the presentation of a Procedure and Privileges Committee report containing recommendations for findings of contempt and the consideration of that report in the House.

**Recommendation 8**

That the following should be adopted as Standing Order 57(2):

**Response to recommended findings of contempt**

57. (2) If the Procedure and Privileges Committee recommends to the House that a person is found guilty of contempt or breach of privilege, that person should have the opportunity to provide a written statement to the Speaker for presentation to the House if the Speaker is satisfied the content is relevant, and is not vexatious or offensive.

### **Recommendation 9**

That Standing Order 267 (1) be amended to read:

Examination of witnesses and adverse references

267. (1) The examination of witnesses by a committee and the processes for dealing with adverse references by a committee will follow the procedural rules determined by the Speaker from time to time.

### **Penalties**

Parliament's powers in relation to punishment for contempt may be significant, particularly when considering its power to imprison, but parliaments have usually demonstrated great restraint with these powers. Nevertheless, the Legislative Assembly is limited in its powers to punish for contempt in relation to fining in particular. In addition, your Committee is of the view that there should be more clarity in the range of and limits on penalties that the Assembly can impose for offences against the House.

The Procedure and Privileges Committee therefore recommends amendments to the *Parliamentary Privileges Act 1891* to reflect generally the provisions of the Commonwealth's *Parliamentary Privileges Act 1987*:

Section 7 of the Parliamentary Privileges Act 1987 (Cth)

- (1) A House may impose on a person a penalty of imprisonment for a period not exceeding 6 months for an offence against that House determined by that House to have been committed by that person.
- (2) A penalty of imprisonment imposed in accordance with this section is not affected by a prorogation of the Parliament or the dissolution or expiration of a House.
- (3) A House does not have power to order the imprisonment of a person for an offence against the House otherwise than in accordance with this section.
- (4) A resolution of a House ordering the imprisonment of a person in accordance with this section may provide that the President of the Senate or the Speaker of the House of Representatives, as the case requires, is to have power, either generally or in specified circumstances, to order the discharge of the person from imprisonment and, where a resolution so provides, the President or the Speaker has, by force of this Act, power to discharge the person accordingly.
- (5) A House may impose on a person a fine:
  - (a) not exceeding \$5,000, in the case of a natural person; or

(b) not exceeding \$25,000, in the case of a corporation; for an offence against that House determined by that House to have been committed by that person.

(6) A fine imposed under subsection (5) is a debt due to the Commonwealth and may be recovered on behalf of the Commonwealth in a court of competent jurisdiction by any person appointed by a House for that purpose.

(7) A fine shall not be imposed on a person under subsection (5) for an offence for which a penalty of imprisonment is imposed on that person.

(8) A House may give such directions and authorise the issue of such warrants as are necessary or convenient for carrying this section into effect.

The drafting process should ensure that the maximum fine penalties in section 5 are expressed so as to adequately account for inflation.<sup>29</sup>

### ***Recommendation to the House in relation to penalties for contempt***

#### **Recommendation 10**

That the *Parliamentary Privileges Act 1891* be amended to reflect generally section 7 of the *Parliamentary Privileges Act 1987 (Cth)*, in particular to establish a better regime for the Legislative Assembly to impose a fine on natural persons and corporations for offences against the House, and to retain and define the power to imprison.

HON. GRANT WOODHAMS, MLA  
CHAIRMAN OF THE COMMITTEE  
24 JUNE 2010

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<sup>29</sup> To illustrate the importance of such a consideration, \$5000 in 1987 when the Commonwealth Act was passed equated to about \$10,210 in March 2009 when adjusted for inflation; \$25,000 in March 1987 would similarly equate to \$51,045 in March 2009, according to the Australian Bureau of Statistics. The current figures in the Commonwealth Act therefore represent a far lesser maximum fine than the Parliament had intended when passing the legislation in 1987.

# **APPENDIX ONE**

## ***SPEAKER'S PROCEDURAL RULES***

**Current as at June 2010**

### 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.

### **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.



## **APPENDIX TWO**

### **AUSTRALIAN HOUSE OF REPRESENTATIVES**

#### **PROCEDURES FOR THE PROTECTION OF WITNESSES BEFORE THE COMMITTEE OF PRIVILEGES AND MEMBERS' INTERESTS**

In considering any matter referred to it which may involve, or give rise to any allegation of, a contempt, the Committee of Privileges and Members' Interests shall observe the procedures set out in this resolution, in addition to any procedures adopted by the House for the protection of witnesses before committees. Where this resolution is inconsistent with any such procedures adopted by the House for the protection of witnesses, this resolution shall prevail to the extent of the inconsistency.

(1) Any person who is the subject of proposed investigation by the committee must be notified in advance of the specific nature of the allegations made against them, preferably formulated as a specific charge, or if this is not possible, of the general nature of the issues being investigated, in order to allow them to respond.

(2) The committee shall extend to that person all reasonable opportunity and time to respond to such allegations and charges by:

- (a) making written submission to the committee;
- (b) giving evidence before the committee;
- (c) having other evidence placed before the committee; and
- (d) having witnesses examined before the committee.

(3) Where oral evidence is given containing any allegation against, or reflecting adversely on, a person, the committee shall ensure that that person is present during the hearing of that evidence, subject to a discretion to exclude the person when proceedings are held in private, and shall afford all reasonable opportunity for that person, by counsel or personally, to examine witnesses in relation to that evidence.

(4) A person appearing before the committee may be accompanied by counsel, and shall be given all reasonable opportunity to consult counsel during that appearance.

(5) A witness shall not be required to answer in public session any question where the committee has reason to believe that the answer may incriminate the witness.

(6) Witnesses shall be heard by the Committee on oath or affirmation.

(7) Hearing of evidence by the committee shall be conducted in public session, except where the committee determines, on its own initiative or at the request of a witness that the interests of the witness or the public interest warrant the hearing of evidence in private session.

(8) The committee may appoint counsel to assist.

(9) The committee may authorise, subject to rules determined by the committee, the examination by counsel of witnesses before the committee.

(10) As soon as practicable after the committee has determined findings to be included in the committee's report to the House, and prior to the presentation of the report, a person affected by those findings shall be acquainted with the findings and afforded all reasonable opportunity to make submissions to the committee, in writing and orally, on those findings. The committee shall take such submissions into account before making its report to the House.

(11) If the committee determines to make a recommendation to the House on a penalty to be imposed on a person, the person affected shall be afforded all reasonable opportunity to make submissions to the committee, in writing and orally, in relation to the proposed penalty. The committee shall take such submissions into account before making its report to the House.

(12) The committee may consider the reimbursement of costs of representation of witnesses before the committee. Where the committee is satisfied that a person would suffer substantial hardship due to liability to pay the costs of representation of the person before the committee, or in the interests of justice, the committee may make reimbursement of all or part of such costs as the committee considers reasonable.

(13) A Member who has instigated an allegation of contempt or who is directly implicated in an allegation, shall not serve as a Member of the committee for any inquiry by the committee into that matter.

(14) Before appearing before the committee a witness shall be given a copy of this resolution.<sup>30</sup>

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<sup>30</sup> Albanese, A., Leader of the House, Parliament of Australia, House of Representatives, *Parliamentary Debates* (Hansard), 25 November 2009, pp12890-12891.

## **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 for 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.