

Guidelines for appearing before Commonwealth Parliamentary Committees

November 2025

Acknowledgement of Country

The Victorian Government acknowledges Aboriginal and Torres Strait Islander people as the Traditional Custodians of Country.

We respectfully acknowledge all First Peoples of Victoria and celebrate their enduring connection to land, skies and waters. We thank First People for their care of Country and contributions to Victorian communities. We honour and pay our respects to First Peoples' Elders past and present.

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Introduction

Accountability

1. In the Australian system of parliamentary government, the public and parliamentary advocacy and defence of government policies and administration has traditionally been, and should remain, the preserve of ministers, not officials.
2. Ministers are responsible for the exercise of Executive power, and are accountable to Parliament for their conduct in the exercise of those powers. The duty of officials is to assist ministers to fulfil their accountability obligations by providing full and accurate information to the Parliament about the factual and technical background to policies and their administration. It is not for officials to defend or make judgements on Government policies.
3. These Guidelines aim to aid officials in discharging these responsibilities and ensuring that accurate information is provided to Commonwealth Parliamentary Committees (Parliamentary Committees) and Commonwealth Royal Commissions (Royal Commissions).

Scope of Guidelines

4. The Guidelines apply to the appearance by officials before Parliamentary Committees and Royal Commissions. These Guidelines do not cover other inquiries (such as party committees, Victorian inquiries) or court appearances.
5. Separate Guidelines relating to appearances before and producing documents to Victorian inquiries and regarding submissions and responses to inquiries are also available.

Application of guidelines

6. These guidelines apply to all Departments and agencies, and statutory authorities are encouraged to comply. If officials of statutory authorities have any queries concerning the application of these guidelines to them, they should discuss the matter with the legal team of the relevant Department, or the Office of the General Counsel, Department of Premier and Cabinet (DPC).
7. These Guidelines are designed to assist officials appearing before Parliamentary Committees and Royal Commissions, by informing them of the principles they are required to follow. It is recognised, however, that the role and nature of some statutory authorities may require some modification of these Guidelines.
8. Where a Parliamentary Committee or Royal Commission's inquiry is directed towards the examination of Departmental administration and practice, it is for the Departmental Secretary, with the general consent of the relevant Minister, to use his or her discretion as to the extent to which aspects of these Guidelines, (for example, Ministerial approval of written evidence and the selection of witnesses), are to be followed.
9. Officials of statutory authorities which have statutory public information and education roles are able to express views on the policy responsibilities of their authorities. Care should be taken however to avoid taking partisan positions on matters of political controversy (refer also paras 65 and 66). In other respects, these guidelines should be followed as far as is relevant including in relation to claims of public interest immunity (refer paras 79-94).
10. Witnesses from statutory authorities must acquaint themselves with relevant secrecy provisions which may apply (refer para 91), and should refer to any code of conduct which may apply.

Further information

11. These Guidelines are intended as a general guide. Prior to appearing before a Parliamentary Committee or Royal Commission, officials in each case should check the relevant statutory and administrative powers of the Parliamentary Committee or Royal Commission (and referred to below).
12. Further general information or guidance should be sought in the first instance from the official's Departmental or Agency Head, and if necessary, from the relevant Minister.
13. Requests for further information about these Guidelines should be directed to the Office of the General Counsel, DPC.
14. Further information on the obligations of officials may be sought from DPC Governance Branch or, if necessary, from the Victorian Public Sector Commission.

Parliamentary Committees generally

Establishment of Parliamentary Committees

15. At Commonwealth level, Parliamentary Committees are established under:
 - a. specific legislation such as the *Public Works Committee Act 1969* (Cth), the *Public Accounts and Audit Committee Act 1951* (Cth) or Part 14 of the *Australian Securities and Investments Commission Act 1989* (Cth) for example; or
 - b. the Standing Orders and resolutions of the House of Representatives or the Senate.
16. Parliamentary Committees are established to inquire into specific policy issues for example, migration, or for more general purposes, such as the Senate Standing Committees on Finance and Public Administration which covers matters relating to finance, and the Prime Minister and Cabinet.
17. Parliamentary Committees may be composed of members from both Houses of Parliament (Joint Committees), or may contain members from one House only.
18. The relevant legislation and the Standing Orders and resolutions of the Houses outline the membership, purposes and powers of the Parliamentary Committees.
19. The *Parliamentary Privileges Act 1987* (Cth) also has important effects on witnesses appearing before Parliamentary Committees.
20. Further information about Parliamentary Committee work can be obtained from the Commonwealth Government's website
https://www.apph.gov.au/Parliamentary_Business/Committees.

Types of Committees

21. There are three types of Parliamentary Committees, and the rules governing the procedure of each type are slightly different. The types of Parliamentary Committees are:
 - a. Standing Committees;
 - b. Select Committees; and
 - c. Statutory Committees.

Parliamentary rules of procedure

22. The rules of procedure which apply when appearing before a Parliamentary Committee vary according to the type of committee.
23. Parliamentary Committees established by Standing Order, such as the Privileges Committee in each House, have procedure regulated by the relevant Standing Orders.
24. Statutory Committees may be subject to regulation in the act establishing the committee, or by resolution of the relevant House.
25. These guidelines should, nonetheless, be read in conjunction with:
 - a. the Senate Parliamentary Privilege Resolutions dated 25 February 1988;
 - b. the House of Representatives Standing Committee on Procedure's Report "Committee Procedures for Dealing with Witnesses" dated 4 April 1989; and
 - c. the *Parliamentary Privileges Act 1987* (Cth).

26. Copies of the resolutions are available on the Parliament of Australia's [website](#) followed by selecting the Hansard record for 25 February 1988. All references to "Resolutions" in the Senate in these guidelines are references to those resolutions of 25 February 1988.

Powers to call for witnesses and documents

27. Generally, Parliamentary Committees have the power to call for witnesses and documents, although the source of the power differs.
28. Standing and Select Committees derive their powers from Standing Orders or resolutions of the relevant House, or in the case of Joint Committees, Houses.
29. Standing Committees in the House of Representatives have the power to call for witnesses and documents under Standing Order 236. Select and Joint Committees are granted powers by resolution.
30. In the Senate, General Purpose Standing Committees have the power to send for persons or documents under Standing Order 25(14). The Senate can grant other Committees the power to call for persons and documents under Standing Order 34(1). Specific Purpose Committees, such as the Privileges Committee, also have specific powers to call for witnesses and documents.
31. Parliamentary Committees established under statute have specific provisions governing the power to call witnesses and documents. For example, section 13 of the *Public Accounts and Audit Committee Act 1951* (Cth) gives the Committee the power to call witnesses and have them produce documents.
32. Officials appearing before non-statutory committees should obtain any relevant resolutions of the House in question relating to the Parliamentary Committee's powers. These should be available from the committee secretariat.
33. Officials required to appear before statutory committees should familiarise themselves with the relevant act, and if necessary, seek legal advice.

Punishment for failure to attend or produce material

34. Failure to appear before a Parliamentary Committee when summoned may be a contempt of Parliament, which is punishable at the discretion of the relevant House. Standing Order 254(b) in the House of Representatives provides for the House to deal as it sees fit with a witness who fails to appear or give evidence. Standing Order 176(2) in the Senate provides for the House to be informed when a witness fails to appear. Paras 12 - 15 of Resolution 6 in the Senate states more clearly that various conduct, such as failing to attend a committee may be a contempt.
35. The *Parliamentary Privileges Act 1987* (Cth) grants a House the power to punish for contempt. Section 7 of the Act provides for punishment by:
- a. committing a person (imprisoning them) for up to 6 months; or
 - b. imposing a fine of up to \$5,000 for a person and up to \$25,000 for a corporation.
36. Section 4 of the Act also provides that conduct cannot constitute contempt unless it is intended to improperly interfere with the free exercise of a Parliamentary Committee's authority or functions.
37. Acts establishing Statutory Committees may also have specific provisions providing for punishment for failure to appear. For example, section 14 of the *Public Accounts and Audit Committee 1951* (Cth) allows the chairman of the committee to issue a warrant for the arrest of any person who fails to appear.
38. Officials required to appear before Statutory Committees should familiarise themselves with the relevant penal provisions in the establishing act.

Preliminaries to an inquiry

What happens once a request for attendance is received?

39. Generally, requests for an official to attend a Parliamentary Committee hearing in an official capacity, or to provide material to it, are made through the relevant Minister.
40. Once a request is received, a number of preliminary steps must be taken. These steps are intended to assist officials who are requested to appear in person before an inquiry. They are also relevant to officials participating in less formal consultations such as public meetings, workshops and "round-tables" which may form part of a committee of inquiry.

Is a state public servant obliged to appear before a Parliamentary Committee?

41. Parliamentary Committees cannot compel a State public servant to appear or provide documents, although a State public servant can still give evidence on a voluntary basis.
42. Notwithstanding the legal position, officials and their superiors should consider very carefully potential consequences of failing to appear or produce documents. Failure to appear may not only result in the commission of an offence, or a contempt, but may damage relations between Governments or Departments.
43. If necessary, Ministerial advice should be sought, or a compromise sought with the relevant Parliamentary Committee, rather than outright refusal to attend.

Preliminary steps

44. In preparing to appear before a Parliamentary Committee of inquiry, officials (including representatives of Departments, statutory authorities and agencies) should be aware of three basic requirements:
 - a. Officials must seek advice, comment or direction from senior officials and if necessary, their Department Head;
 - b. Officials should have a sound knowledge of relevant Government policy and any submissions made previously to the inquiry;
 - c. Officials must be aware that they are representing the Victorian Government and are providing a whole-of-government perspective. Appearances are not an opportunity to express personal or agency views.
45. Where more than a single Victorian Department (not including DPC) is involved, officials must inform DPC and co-ordinate involvement in Parliamentary Committee hearings with the lead agency (where DPC is not the lead agency). DPC must be kept fully informed of the progress of witnesses before Parliamentary Committee hearings, by way of discussion with the relevant DPC contact and, if necessary, through correspondence to the Secretary, DPC.
46. Where only a single Victorian Department is involved (not including DPC), officials must inform DPC initially, and DPC must be kept fully informed of the progress of witnesses before Parliamentary Committee hearings, by way of discussion with the relevant DPC contact and, if necessary, through correspondence to the Secretary, DPC.
47. Where DPC is the lead agency in either case, officials from other involved Departments must inform DPC who will co-ordinate involvement in Parliamentary Committee hearings.

48. Where DPC is the only Department involved, the progress of witnesses in front of Parliamentary Committees should be documented, and if necessary, other relevant Departments informed of progress.

Who chooses the witnesses?

49. A Minister may delegate to the Department Secretary the responsibility of deciding the official(s) most appropriate to provide the information sought by a Parliamentary Committee. It is essential that the official(s) selected should have sufficient responsibility or be sufficiently close to the particular work area to be able to satisfy the committee's requirements.
50. Where an official receives correspondence directly from a Parliamentary Committee, the procedure described in paras 44 to 48 applies.

How should witnesses prepare?

51. It is essential that all witnesses be thoroughly prepared for hearings. Preparation should include:
- a. familiarity with probable lines of questioning;
 - b. clear understanding of relevant Government policy;
 - c. background research on the issue being considered by the committee;
 - d. engagement with the Department's internal legal team; and
 - e. where possible, information concerning any other particular interests of committee members relevant to the inquiry.
52. Useful sources of information concerning these topics include the committee secretariat, Hansard and previous Parliamentary Committee reports.
53. Officials who have not previously attended Parliamentary Committee hearings should receive briefings from senior officials, or other officials who may have appeared before Parliamentary Committees in the past, on the requirements. Senior officials should satisfy themselves, so far as possible, that all witnesses are capable of giving evidence creditably.

When should a witness consult with the minister?

54. Depending on the importance of the inquiry, witnesses should consult the relevant Minister before a hearing and, if required, the Minister representing the relevant Minister in the other House.
55. Examples of the need for consultation include proposed claims that it would be in the public interest to withhold certain documents or information, or requests for the hearing of evidence in private (refer paras 87 and 103).
56. Clause 2.2 of the Victorian Public Sector Code of Conduct (VPSCC) requires that: "Information sought by Parliamentary Committees should be provided unless the relevant minister certifies that disclosure would be prejudicial to the public interest."

Preparation of written material

57. Generally, Departments should provide a written statement on which any oral evidence is to be based. Senate Resolution 1(4) gives a witness the opportunity to make a written submission before giving oral evidence. In addition, where a Parliamentary Committee asks written questions, written replies should be provided. All written material (authorised in accordance with these Guidelines) should be sent to the committee secretary.
58. When the interests of several Departments are involved, adequate consultation should take place in preparing material and making arrangements for witnesses to attend.

How should written material deal with policy issues?

59. Written material prepared by an official for use at a Parliamentary Committee hearing should conform to the following broad principles. Generally, written material:
- a. should not advocate, defend or canvass the merits of government policies (including policies of previous Commonwealth governments, or State or foreign governments) in a subjective way. Officials should not be deterred however from objectively explaining the reasons for policy decisions. In unusual circumstances, the relevant Minister may wish to make written submissions, to appear personally, to arrange for Ministers representing them to appear personally, or to invite Parliamentary Committees to submit questions on policy issues in writing;
 - b. may describe relevant State Government policies and the administrative arrangements and procedures involved in implementing them;
 - c. should not identify confidential considerations leading to government decisions or possible decisions, in areas of any sensitivity, unless those considerations have already been made public or the Minister authorises the Department to identify them. It may be preferable to have the Minister canvass the material in these categories, but if Departments are to canvass such material, they should clearly bring it to the Minister's attention when seeking approval for the submission;
 - d. must not disclose any Cabinet in confidence material such as Cabinet deliberations, reports or submissions prepared for the assistance of Cabinet or documents so close to Cabinet processes that they may indirectly involve disclosure of Cabinet deliberations (refer para 89); and
 - e. may, after consultation with the Minister, set out policy options and list the main advantages and disadvantages, but should not reflect on the merits of any judgement the Government may have made on those options or otherwise promote a particular policy viewpoint.
60. In the Senate, Resolution 1(17) states that officials of a state are not to be asked their opinion on policy matters, and must be given reasonable opportunity to refer questions to superiors.

Approval of written material by minister

61. Any written material to be used in the appearance should be cleared to appropriate levels within the Department, and normally with the Minister, in accordance with arrangements approved by the Minister(s) concerned.
62. Where a Parliamentary Committee is inquiring into the personal actions of a Minister (or official) and seeks information from officials, there may be circumstances where it is not appropriate for the requirements set out above for approval of written evidence to be followed.

Requests for more time to prepare evidence

63. The Minister (or the Department on his or her behalf) may ask the Parliamentary Committee for more time to prepare evidence, especially if the witness has received insufficient notice of an appearance, or where complex issues may be involved in written material being prepared.
64. Senate Resolution 1(3) requires a witness be given reasonable notice along with documentation such as the Parliamentary Committee's terms of reference and matters expected to be dealt with during the witness's appearance, which might help them prepare.

Conduct during hearings

General principles

65. Officials should be open with Parliamentary Committees and if unable or unwilling to answer questions or provide information, should say so, and give reasons. It is also, of course, incumbent on officials to maintain the highest standards of courtesy in their dealings with Parliamentary Committees.

66. Clause 2.2 of the VPSCC provides that:

"On matters of Government business, public sector employees may appear before parliamentary committees as a representative of a minister. They are not therefore expected to answer questions:

- seeking their personal views on government policy;*
- seeking details of matters considered in relation to a ministerial or government decision or possible decision, unless those details have already been made public or the giving of evidence on them has been approved; or*
- that would require a personal judgement on the policies or policy options of the Victorian or other governments.*

Public sector employees who are directed to answer a question falling within the coverage of the categories listed above, seek a deferral until they can discuss the matter with the minister or chief executive as appropriate. Alternatively, they can request that the answer to the particular question be reserved for submission in writing."

Administering an oath

67. The Standing Orders in each House do not expressly require the giving of evidence under oath, and so the relevant Parliamentary Committee may determine the procedure to be followed. The exception is the Senate and House of Representative Privileges Committees. Senate Resolution 2(6) and the Procedures for the protection of witnesses before the Committee of Privileges and Members' Interests respectively require witnesses in front of these Parliamentary Committees to be sworn on oath or affirmation.

68. Statutory Committees may have provision in their governing act for the taking of evidence on oath. For example, Schedule 1 of the *Intelligence Services Act 2001* (Cth) gives the Parliamentary Joint Committee on Intelligence and Security the power to take evidence by oath or affirmation. In the case of some Statutory Committees, failure to be sworn may itself be an offence. Officials should be aware that as a result of taking an oath or affirmation, the provision of intentionally false evidence would be a criminal offence.

69. The provision of false or misleading information to a Parliamentary Committee, whether constituting a criminal offence or not, is likely to be construed as "serious misconduct" within the meaning of section 31(1)(d) of the *Public Sector Management and Employment Act 1998* (Vic), thereby providing a basis for termination of employment.

70. Executive officers may also be subject to dismissal in these situations if dismissal on that basis is consistent with their contract. Since the standard executive contract includes the VPSCC, conviction or failure to give truthful evidence not resulting in conviction may be a breach of the code thereby providing grounds for dismissal in accordance with their contract.

71. Officials required to appear before Statutory Committees should familiarise themselves with the relevant provisions in the establishing act.

Clarification or amplification of evidence

72. Parliamentary Committees may occasionally seek information which may properly be given, but where officials are unsure of the facts, or do not have the information to hand. In such cases witnesses should qualify their answers as necessary so as to avoid misleading the committee, and, if appropriate, should give undertakings to provide further clarifying information.
73. It may be appropriate to ask for written confirmation of information requested and it is particularly important to submit such further material without delay.

Should witnesses answer questions about other departments' responsibilities?

74. Witnesses should take care not to intrude into responsibilities of other Departments and agencies (refer also paras 57 to 62). Where a question falls within the administration of another Department or agency, an official witness may request that it be directed to that Department or agency or be deferred until that Department or agency is consulted.

When should evidence be withheld?

75. There are three main areas in which officials need to be alert to the possibility that they may not be able to provide Parliamentary Committees with all the information they seek, or may need to request restrictions on the provision of such information. These are:
 - a. matters of policy;
 - b. public interest immunity; and
 - c. confidential material where private evidence is desirable.
76. The conduct of official witnesses in relation to these areas is described in detail below.

How should witnesses deal with "policy" questions?

77. As mentioned in para 66, the role of an official witness is not to comment on policy but to speak to any statement provided to the Parliamentary Committee and to provide factual and background material to assist understanding of the issues involved. The procedure applying to written submissions (refer paras 61 to 62) also apply to oral evidence. Note, however, that such restrictions do not necessarily apply to statutory officials (refer para 9).
78. If an official witness is directed to answer a "policy" question and has not previously cleared the matter with the Minister, the official should ask to be allowed to defer the answer until approval is obtained. Alternatively, it may be appropriate for the witness to refer to the written material provided to the Parliamentary Committee and offer, if the committee wishes, to seek elaboration from the Minister, or to request that the answer to a particular question be reserved for submission in writing.
79. The House of Representatives Resolution on Procedures for dealing with witnesses provides at clause 13 that a departmental officer should not be asked to give opinions on policy and should be given reasonable opportunity to refer questions to superiors or the Minister. If a witness believes that such a question has been asked, they may object to it under clause 9 of the resolution. The Parliamentary Committee must then deliberate as to whether it will insist the question be answered. If it insists, then it must give reasons to the witness and the evidence will be taken in private unless the committee determines that it is essential that it be heard in public.

80. For Senate Committees, as mentioned before, Senate Resolution 1(17) prohibits the committee asking a state official for an opinion on policy matters. If a witness believes that such a question has been asked, then they may object to it under Senate Resolution 1(10), providing the ground, namely that the question involves an opinion on policy. The committee must then deliberate as to whether it will insist the question be answered. If it insists, then it must give reasons to the witness and the evidence will be taken in private unless the committee determines that it is essential that it be heard in public.
81. Moreover, Senate Resolution 1(5) seeks to avoid this situation by allowing a witness to make a statement about matters of concern to the witness in pre-hearing discussions before appearing at the Senate Committee hearing.
82. Statutory Committees have stricter rules and failure to answer a question, even if policy based, may result in the commission of an offence. For example, schedule 1, clause 10(1) of the *Intelligence Services Act 2001* (Cth) makes it an offence to fail to answer a question put by the Joint Committee on Intelligence and Security. Other Statutory Committees have their powers determined by resolution of the relevant House(s) in which case failure to answer a question may constitute a contempt (refer para 34).
83. Officials required to appear before Statutory Committees should familiarise themselves with the relevant penal provisions in the establishing act and the relevant House resolutions.

Can a witness claim public interest immunity?

84. Public interest immunity is a legal doctrine under which a Court or an inquiry will not order the production or admission into evidence of a document or information, where it is in the public interest to keep the document or information confidential. Public interest immunity has been described as a safeguard for the proper functioning of government, or more broadly maintaining social peace and order. More information regarding public interest immunity is set out in the WOVG Guidelines for Public Interest Immunity Claims.

Claims to be made by ministers

85. Claims that information should be withheld from disclosure on grounds of public interest (public interest immunity) should be made by Ministers with Cabinet approval.
86. As far as practicable, decisions to claim public interest immunity should take place before hearings, so that the necessary documentation can be produced at the time. The normal means of claiming public interest immunity is by way of a letter from the Minister to the Parliamentary Committee chairperson. The DPC Office of the General Counsel should be consulted on the appropriateness of the claim in the particular circumstances and the method of making the claim.
87. As a matter of practice, before making a claim of public interest immunity, a Minister might explore with a Parliamentary Committee the possibility of providing the information in a form or under conditions which would not require the claim to be made.

Matters arising during hearing

88. If a witness, when giving evidence to a Parliamentary Committee, believes that circumstances have arisen which may attract a claim of public interest immunity, the official should request a postponement of the evidence, or of the relevant part of the evidence, until the Minister can be consulted.

Scope of public interest immunity

89. Documents or verbal evidence which could form the basis of a claim of public interest immunity are discussed in detail in the WOVG Guidelines for Public Interest Immunity Claims.
90. For a more detailed understanding of public interest immunity, you should seek advice from Departmental legal advisers or the Victorian Government Solicitor's Office (VGSO).

What other considerations might be relevant?

91. In addition, the following considerations may affect a decision whether to make documents or information available:
 - a. secrecy provisions of acts. Legal advice should be sought when occasions involving such provisions arise; and
 - b. court orders or sub judice issues. Where the provision of information would appear to be restricted by a court order, or where the question of possible prejudice to court proceedings could arise, legal advice should be sought.

Are Parliamentary Committee hearings public?

92. Standing Order 235 in the House of Representatives gives any Parliamentary Committee the discretion to conduct proceedings in private or public, as approved by the House, and hear witnesses in public or private. Officials appearing will need to contact the committee secretariat to ascertain whether any given hearing is in public or not.
93. In the Senate, Standing Order 25(14) states that General Purpose Committees can hold their business in public or private. Under Resolution 2(7), the Privileges Committee must hear evidence in public unless circumstances warrant, in the interest of the witness' protection or if granting a request to hear in private (refer paras 97 to 104 below).
94. In the case of other Specific Purpose Committees in the Senate, the relevant Standing Orders may provide a discretion to hear evidence in private (for example Standing Order 23(11) in relation to a Standing Committee for the Scrutiny of Delegated Legislation).
95. Statutory Committees may have special provision for hearings in their governing legislation. For example, section 18A of the *Public Works Committee Act 1969* (Cth) states that the Public Works Committee can hear evidence in private or in public.
96. Officials required to appear before Statutory Committees should familiarise themselves with the relevant provisions in the establishing act and any relevant House or committee resolutions.

Can a witness request that evidence be given in private (in camera)?

97. There may be occasions when a Minister (or, on his or her behalf, the Department Secretary) would wish, after balancing the public interests involved, to raise with the Parliamentary Committee the possibility of an official producing documents or giving verbal evidence in private, and on the basis that the information not be disclosed or published except with the Minister's consent.
98. As mentioned above, Standing Order 235 in the House of Representatives gives any Parliamentary Committee the discretion to conduct proceedings in private or public, as approved by the House. The Standing Orders do not prohibit a witness requesting evidence be given in private, and ultimately, the committee has discretion.

99. As mentioned above, Senate Standing Order 25(14) states that General Purpose Committees can hold their business in public or private. The Senate Resolutions contain specific procedures for witnesses to apply to have evidence heard in private. Resolution 1(7) obliges the committee to give a witness the opportunity to make application to have evidence heard in private. Similarly, in the Privileges Committee, Resolution 2(7)(a) contemplates a witness being able to request the committee to have evidence heard in private.

100. Estimates Committees in the Senate, which are a type of Standing Committee must hear evidence in public under Standing Order 26(2).

101. Statutory Committees may have special provision for hearings in their governing legislation. For example, section 11 of the *Parliamentary Proceedings Broadcasting Act 1946* (Cth) states that the Broadcasting of Parliamentary Proceedings Committee can proceed as it sees fit.

102. Officials required to appear before Statutory Committees should familiarise themselves with the relevant provisions in the establishing act and any relevant House or committee resolutions.

What happens if a witness believes that evidence should be given in private during proceedings?

103. If, when giving evidence to a Parliamentary Committee, an official witness believes that circumstances have arisen to justify requesting that evidence be heard in private, the official should make such a request if the possibility has been foreshadowed with the Minister, or should ask for the postponement of the evidence or the relevant part of the evidence until the Minister can be consulted. The guidelines in the previous paragraph are applicable and Senate Resolution 1(7) (as mentioned above) obliges any Senate Committee to give a witness the opportunity to apply to have evidence heard in private.

104. These circumstances might include cases where:

- a. although a claim of public interest immunity could be justified, the Minister considers that the balance of public interest lies in making the relevant information available to the Parliamentary Committee;
- b. while a claim of immunity may not be appropriate, other considerations justify the Parliamentary Committee being asked to take evidence privately. Examples, are evidence the public disclosure of which would:
 - i. affect law enforcement or protection of public safety;
 - ii. have a substantial adverse effect on financial or property interests of the Commonwealth;
 - iii. prejudice the attainment of the objects or effectiveness of procedures or methods for the conduct of tests, examinations or audits of a Commonwealth agency;
 - iv. have a substantial adverse effect on the management or assessment of personnel, or on the proper and efficient conduct of the operations of a Commonwealth agency including the conduct by the Commonwealth of industrial relations;
 - v. unreasonably disclose information relating to the personal affairs of any person. Note also that Senate Resolutions 1(11) to 1(13) provide that a Senate Committee may consider taking evidence reflecting adversely on a person in private. The Privacy Act 1988 (Cth), in particular Part III which explains Australian Privacy Principles, is also relevant;
 - vi. reveal business affairs, including trade secrets or other commercially sensitive information;

- vii. reasonably be expected to have a substantial adverse effect on the management of the economy or on the conduct of business generally; or
 - viii. disclose material obtained in confidence; or
- c. similar or identical evidence has been previously given in private to other hearings of the committee or other Parliamentary Committees and has not been made public.

Parliamentary Committee requests for evidence “off the record”

105. Standing Order 239 in the House of Representatives obliges the Secretary of any Parliamentary Committee to record all proceedings of the relevant committee.
106. In the Senate, Standing Order 35(2) requires that witness evidence in general committees be recorded in a transcript.
107. Officials should be aware that there is no such thing as evidence which is "off the record", and any information purportedly given in such a way will not be protected (as referred to below) and may expose the official or the Government to adverse consequences. In the unlikely event an official is asked to give evidence "off the record", he/she should request that the evidence be given on the record, and if necessary, a postponement be granted until the Minister can be consulted.

Protection of submissions and witnesses

Parliamentary privilege

108. The protection of parliamentary privilege means that a person cannot be sued or prosecuted in respect of the act or the material protected; nor can that act or material be used against a person in legal proceedings.
109. The act of submitting a document to a Parliamentary Committee is protected by section 16 of the *Parliamentary Privileges Act 1987* (Cth). Section 16(2)(d) stipulates however that any publication of the submission other than to the committee, however, is protected by parliamentary privilege only if that publication takes place by or pursuant to the order of the committee, in which case the content of the document is also protected.
110. The unauthorised disclosure of a document or evidence submitted to a Parliamentary Committee, that is, a disclosure not authorised by the committee or the House concerned, may be treated as a criminal offence under section 13 of the *Parliamentary Privileges Act 1987* (Cth). Senate Resolution 6(16) also makes such disclosure a contempt of the House.
111. In the case of Statutory Committees, governing legislation may make specific provision for disclosure also. For example, schedule 1, clause 9 of the *Intelligence Services Act 2001* (Cth) makes any unauthorised disclosure of the committee on Intelligence and Security's evidence an offence.
112. Officials required to appear before Statutory Committees should familiarise themselves with the relevant provisions in the establishing act and any relevant House or committee resolutions.

Witness tampering

113. Section 12(1) of the *Parliamentary Privileges Act 1987* (Cth) prohibits a person from using various means, including threat, intimidation or inducement to influence another person in respect of evidence to be given before a House or Parliamentary Committee. Section 12(2) also prevents a person penalising another because they are to, or have given already such evidence.
114. Section 12(3) makes it clear that the legislative provisions do not remove the Houses' inherent power to punish for contempt. In the Senate, Resolutions 6(10) and 6(11) make molestation or interference with a witness a contempt of the House.
115. In a similar vein, Statutory Committees may have specific provisions protecting witnesses. For example section 29 of the *Public Works Committee Act 1969* (Cth) prohibits a person from preventing another person from obeying a summons issued by the Public Works Committee.
116. Officials required to appear before Statutory Committees should familiarise themselves with the relevant provisions in the establishing act.

Self-incrimination

117. The generally accepted principle is that a witness cannot refuse to answer a question or produce documents on the ground that the answer to the question or the production of documents might incriminate the witness.
118. The House of Representatives' Resolution on Procedures for dealing with witnesses provides at clause 9 that a witness may object to answering any question put by the House committees which may incriminate them, and the committee must determine in private whether to press for an answer. The Resolution on Procedures for the protection of witnesses before the Committee of Privileges and Members' Interests also provides at clause 5 that a witness shall not be required to

answer questions in public session where the committee has reason to believe that the answer may incriminate the witness.

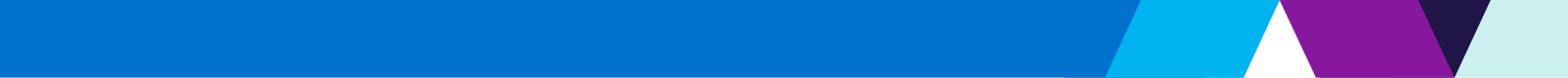
119. In the Senate, Resolution 1(10) contemplates that a witness may object to a question which might incriminate them. In this situation, the Parliamentary Committee must determine in private whether to press for an answer. If the answer is required, the committee must give reasons for that decision. Resolution 2(5) also states that a witness is not required to answer any question before the Privileges Committee which the committee believes might incriminate the witness in a public committee session.
120. For Statutory Committees, specific self-incrimination provisions may provide some protection to the witness. Schedule 1, clause 10(3) of the *Intelligence Services Act 2001* (Cth) specifically states that self-incrimination is a reasonable excuse not to answer a question put by the Committee on Intelligence and Security.
121. Officials required to appear before Statutory Committees should familiarise themselves with the relevant provisions in the establishing act and any relevant House or committee resolutions.
122. An official confronted with a question the answer to which may incriminate them, should request that as a minimum, if required to answer, the evidence be taken in private, and otherwise should seek independent legal advice.

Can a witness have representation at a Parliamentary Committee hearing?

123. The House of Representatives' Resolution on Procedures for dealing with witnesses provides at clause 12 that a witness may apply to be accompanied by counsel or an adviser when appearing before a Parliamentary Committee. If the committee declines, it must give reasons. A witness appearing before the Committee of Privileges and Members' Interests may also be accompanied by counsel under the Resolution on Procedures for the protection of witnesses before the Committee of Privileges and Members' Interests.
124. In the Senate, Resolution 1(14) expressly provides that a witness may apply to the committee to have counsel represent them. If the committee declines, it must give reasons. In the Senate Privileges Committee however, Resolution 2(4) gives a witness the option of being accompanied by counsel when appearing before the committee.
125. In relation to Statutory Committees, officials required to appear should familiarise themselves with the relevant provisions in the establishing act and any relevant House or committee resolutions regarding the availability of counsel.
126. Normally officials should not need counsel when appearing before Parliamentary Committees. Should the need arise, however, DPC should be consulted.

Can a witness claim expenses?

127. The House of Representatives' Resolution on Procedures for the protection of witnesses before the Committee of Privileges and Members' Interests allows the committee to consider reimbursement of costs of representation of witnesses before the committee. However, the committee must be satisfied that the person would suffer substantial hardship to pay the costs of representation before the committee or that it is in the interests of justice.
128. In the Senate Privileges Committee, Resolution 2(11) allows the committee to recommend that it reimburse witnesses for the costs of representation only, and the President is authorised to make reasonable reimbursement of such costs.

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129. The establishing legislation for certain Statutory Committees may provide for witness expenses, in some cases, on a broader scale. Section 20 of the *Public Accounts and Audit Committee Act 1951* (Cth) provides for payment of witness travelling expenses, although there is no current regulations in place setting out any applicable prescribed scale for amounts payable.
130. In relation to Statutory Committees, officials required to appear should familiarise themselves with the relevant provisions in the establishing act and any relevant House or committee resolutions regarding witness expenses.
131. If a witness wishes to claim for expenses, the matter should be discussed with senior officials, and if warranted, a formal written request should be made to the committee for reimbursement of the expenses.

Other matters

Correction of evidence

132. The House of Representatives' Resolution on Procedures for dealing with witnesses provides at clause 15 that reasonable opportunity should be afforded to witnesses to request corrections in the transcript of their advice and provide supplementary material.
133. Resolution 1(18) in the Senate provides that witnesses must be given reasonable opportunity to have errors in the transcript of their evidence corrected, and provide supplementary material.
134. Statutory Committees do not usually have provisions allowing for correction of evidence in their governing legislation. Resolutions by a House may however allow such correction. Officials required to appear should familiarise themselves with the relevant provisions in the establishing act and any relevant House or committee resolutions.
135. Once proceedings have concluded and an official record of the Parliamentary Committee's deliberations is available, officials should carefully scrutinise the record for accuracy. Any inaccuracy should be brought to the attention of the committee and a request to correct the record made. In some cases, it may be necessary to furnish a further statement to make the corrections. The Parliamentary Committee may require that correction be made in a particular form, using agreed wording or other material.
136. If a witness believes that they have omitted some relevant evidence, the witness should consult with the Minister (or Departmental Secretary), with a view to seeking leave of the Parliamentary Committee to lodge a supplementary statement or give further verbal evidence. All supplementary written material authorised in accordance with these Guidelines should be forwarded to the committee secretary.

Publication of evidence

137. Officials must bear in mind that any evidence which is given at a Parliamentary Committee may be made publicly available. Evidence provided to Parliamentary Committees in a public hearing is normally published in the form of a Hansard record. Notwithstanding, there exist a number of restrictions on publication of Parliamentary Committee evidence generally.
138. Standing Order 242 in the House of Representatives gives any Parliamentary Committee power to authorise publication of any evidence given before it, or document given to it. In the Senate, Standing Order 25(16) grants a similar power. Both Standing Orders are complemented by section 2(2) of the *Parliamentary Papers Act 1908* (Cth) which gives any Parliamentary Committee the power to publish any document or evidence given before it.
139. In the case of private evidence however, section 13 of the *Parliamentary Privileges Act 1987* (Cth) provides that this evidence must not be published without the express authority of a House or Parliamentary Committee. Similarly, Resolution 6(16) in the Senate makes unauthorised disclosure of evidence given in private a contempt of the Senate.
140. Resolution 1(8) in the Senate also states that witnesses must be informed of whether the Parliamentary Committee intends to publish any evidence given in private. Similar provision is contained in clause 7 of the House of Representatives' Resolution on Procedures for dealing with witnesses.

141. Statutory Committees may also expressly provide for restrictions on publication of witness evidence given in private. One such provision is section 23(4) of the *Public Works Committee Act 1969* (Cth) which prohibits publication of witness evidence without the witness' written consent in certain circumstances. If a committee seeks a witness' concurrence to publish evidence, they should ask the committee to delay the decision to enable the witness to consult the Minister or the departmental Secretary.

142. In relation to Statutory Committees, officials required to appear should familiarise themselves with the relevant provisions in the establishing act.

143. If documentation or evidence is given to a Parliamentary Committee which an official, or the Minister regards as sensitive and should not be published, the Parliamentary Committee should be made aware of this fact in writing at the time the evidence or documentation is given to the committee. Once the committee deliberations are finished, a written request may be necessary to request that the Parliamentary Committee not publish the material in question.

Parliamentary Committee requests for further information

144. On occasion, following an appearance, a Parliamentary Committee may write to the person who has appeared requesting further information, or written answers to questions posed during a hearing (which may have occurred by arrangement). Where such a request is received, the protocols surrounding the provision of written material in paras 57 to 62 must be observed. Similarly, it may be necessary to consult other Departments who were involved in the hearing, and DPC for information or guidance.

Appearance in a "personal" capacity

145. There is no restriction on officials appearing before Parliamentary Committees in their "personal" capacity. An official so called, however, should pay heed to these guidelines and the VPSCC, especially clauses 17-21. Furthermore, officials are bound by confidentiality restrictions in:

- a. clauses 2.2, 6.2 and 6.3 of the VPSCC;
- b. any applicable employment contract; and
- c. section 95 of the *Constitution Act 1975* (Vic) which prevents a person employed in the service of the State of Victoria from using information obtained during their employment except in performance of duties.

146. These restrictions are ongoing and continue to apply even once the official has left the Victorian Public Service.

147. It is essential to recall that comments made in front of Parliamentary Committees may be made public at some stage.

148. It is particularly important for senior officials to give careful consideration to the impact, by virtue of their positions, of any comment they might make. Heads of agencies and other very senior officials need to consider carefully whether, in particular cases, it is possible for them realistically to claim to appear in a "personal" rather than an "official" capacity, particularly if they are likely to be asked to comment on matters which fall within or impinge on their area of responsibility. An official who is appearing before a Parliamentary Committee in a personal capacity.

Appearing before the bar of a house of parliament

149. In the House of Representatives, situated at the back row of Members' seats at the point of entry to the Chamber from the main entrance facing the Speaker's Chair is the Bar of the House. It consists of a cylindrical bronze rail which can be lowered across the entrance. It is a point outside which no Member may speak to the House or over which no stranger may cross and enter the Chamber unless invited by the House. In parliamentary history, the Bar is the place to which persons are brought in order that the Speaker may address them on behalf of the House or at which they are orally examined.
150. In the House of Representatives, Standing Order 255(b) states that a witness (other than a Member) before the House is to be examined at the Bar unless the House orders otherwise.
151. In the Senate, there is a double brass gate which forms a barrier at the main entrance to the Senate Chamber beyond which only Senators may enter. When examined at the Bar, witnesses stand outside the closed gate.
152. The Standing Orders make no reference to witnesses at the Bar.
153. It would be only in exceptional circumstances that an official would be summoned to the Bar of a House of the Parliament and each case would need individual consideration.
154. As a general rule, it would be appropriate for these Guidelines to be followed in so far as they apply to the particular circumstances.

Appearances before a Royal Commission

155. A "Royal Commission" or "Board of Inquiry" is an ad hoc advisory body appointed by Government to obtain information in the form of a report. Frequently, such bodies are required to make assessments of information collected and make recommendations to Government.
156. The power to issue letters patent establishing a Royal Commission is a power derived from the monarch, which now resides in his or her representative, the Governor-General. Notwithstanding this, the *Royal Commissions Act 1902* (Cth) provides a statutory basis for the appointment of a commission. Section 1A gives the Governor-General a specific power to issue a commission.
157. Broadly speaking, these guidelines, in particular the paragraphs relating to claims of public interest immunity and hearings in private by a Royal Commission, apply to appearances by officials. Officials should follow the same protocols in relation to what evidence should be given, preparation and consultation for example. Some aspects of appearances are however affected by the *Royal Commissions Act 1902* (Cth), discussed below.
158. Royal Commission appearances are similar to court proceedings and are subject to the *Royal Commissions Act 1902* (Cth). These provisions affect witness privileges and obligations to attend.
159. Section 2 of the *Royal Commissions Act 1902* (Cth) gives the Commission the power to call for witnesses by summons, to have them attend and bring any documents specified. It also allows a commission member to administer and examine witnesses on oath or affirmation.
160. Section 3 provides that a witness must not fail to attend or produce a document without reasonable excuse. A reasonable excuse is defined in section 1B as an excuse which would be applicable to a witness in a court action. Breach of section 3 is an offence, punishable by imprisonment for 2 years. An additional offence is provided for by section 6, which states that failure to be sworn or answer a relevant question attracts imprisonment for 2 years.
161. It is doubtful that a State public servant could be compelled to appear before a Royal Commission, on the same reasoning referred to in paras 41-43. It is necessary however to consider any non-appearance seriously, as failure to appear is an offence under the Act.

162. Section 7AA allows a State Governor or a State Minister to confer functions on a Royal Commission. If this provision is still valid it is possible that a Royal Commission with State powers and functions could compel a State public servant to appear. In either case, specific legal advice should be obtained before any decision as to appearance is taken.
163. Section 6D(3) allows for restrictions on the publication of the Commission's proceedings. The Commission can direct that any evidence, document or identifying information not be published.
164. Section 6A removes the privilege against self-incrimination for witnesses, but 6DD makes any incriminating evidence inadmissible in civil or criminal trials. Section 6A(3) does however contain an exception relating to criminal proceedings which have not yet been concluded. A witness can claim the privilege in relation to a question or document where the witness has already been criminally charged but the charge has not been finally dealt with by a court.
165. Sections 6G and 8 provide for witness allowances and expenses. Section 6G provides for expenses to be paid according to a prescribed scale, or in the discretion of the Commission Chairperson. Section 8 allows for the making of regulations regarding witness travelling expenses and maintenance. The *Royal Commissions Regulations 2019* (Cth) sets out the prescribed scale for witnesses' expenses and allowances.
166. It is highly likely that if required to appear before a Royal Commission, an official would be represented by counsel. Accordingly, specific advice on other aspects of an appearance should be sought from the relevant legal branch, or counsel.

