



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Committee Manual

PRACTICE and PROCEDURES

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COMMITTEE OFFICE

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1 Introduction

- 1.1 This manual has been prepared for Members, staff of the Department of the Legislative Assembly and other interested individuals as a guide to the role and operation of Assembly committees in the Northern Territory. Additional information may also be found in the *Chairs' Guide to Committees* and the *Members' Guide to Committees*.
- 1.2 Standing, Sessional and other Orders, relevant legislation, and parliamentary convention have been taken into account in the preparation of this manual. As the Assembly follows the practice of the Australian House of Representatives on any issue where it has not made its own orders, frequent reference is made to the *House of Representatives Practice*.¹

Role and Function of Committees

- 1.3 Assembly committees undertake functions of the Assembly that can more conveniently be performed by a small group of Members. This commonly includes inquiring into and reporting on matters of public importance, such as government activities, difficult issues of public policy, or the merits of a proposed law. Committees comprise Government, Opposition and independent Members. They are extensions of the Assembly and operate according to the authority delegated to them.
- 1.4 Inquiries are conducted by gathering information from individuals, organisations, government departments and experts on the matters being investigated. Committees examine evidence, draw reasoned conclusions and write reports that make recommendations to the Assembly and the government. Committees can improve public accountability of government and contribute towards a better informed government administration and the development of public policy.
- 1.5 Committees provide opportunities for Members of the Legislative Assembly and members of the public to be in personal contact as they take part in committee activities such as hearings, site visits and inspections. This can promote public awareness and debate of the issues being considered by Parliament and allows more direct public input into parliamentary and policy processes. They also give Members the opportunity to exchange views across party lines and reach conclusions and recommendations on matters of public interest referred to the committees.

Types of Committees

- 1.6 The Legislative Assembly of the Northern Territory has three types of committees: standing, select and sessional. These terms refer to the duration of the life of a committee.

¹ D. R. Elder, (ed) *House of Representatives Practice (Seventh Edition)*, Department of the House of Representatives, Canberra ACT, 2018

Standing Committees

- 1.7 Standing committees investigate and report on specific subject areas for the life of an Assembly. Some are required by the Standing Orders of the Legislative Assembly and are appointed at the commencement of each Assembly. The Assembly may also decide to establish additional standing committees over time.
- 1.8 Since the eighth Assembly the Standing Orders have provided for six standing committees:
- **Standing Orders Committee** – inquires into, reports on and reviews possible amendments and additions to Standing Orders to help the Assembly operate efficiently² The Standing Orders Committee also acts as the **Committee of Members' Interests** which decides how Members must declare their interests, such as shares in a company or the details of savings or investment accounts. Members' interests are held in a register and the committee decides how people can view this register.
 - **Committee of Privileges** – inquires into and reports on complaints of a breach of parliamentary privilege. A breach is any action which breaks the rules of the Parliament or interferes with the working of the Parliament.³
 - **House Committee** – advises the Speaker on matters relating to the operation of Parliament House and precincts, and services to Members.⁴
 - **Subordinate Legislation and Publications Committee** – examines and reports on all legislative or administrative instruments which are required by law to be tabled in the Assembly. In the 14th Assembly, Sessional Order 10 suspended Standing Order 176 and assigned these functions to the Legal and Constitutional Affairs Committee.⁵ A similar Sessional Order applied in the 12th and, for a while, in the 13th Assemblies.
 - **Public Accounts Committee** – examines the receipts and expenditure of the Northern Territory, statements and reports that must be tabled in the Assembly under the *Financial Management Act* and the *Audit Act*, reports of the Auditor-General and reports by statutory bodies tabled in the Assembly, and any other matter within the executive authority of Ministers of the Territory.
 - **Legal and Constitutional Affairs Committee** – inquires into, reports on and makes recommendations upon constitutional and legal matters. This may include law reform, parliamentary reform, administrative law, legislative review, inter-governmental relations, and the legal or constitutional relationship between the Northern Territory and the Commonwealth.
- 1.9 The 13th Assembly established the **Standing Committee on the ICAC**, which performs the functions the Assembly Committee under the ICAC Act, examines

² Legislative Assembly of the Northern Territory, 'Standing Orders Committee', viewed on 18 April 2018
<https://parliament.nt.gov.au/committees/standing-orders>

³ Legislative Assembly of the Northern Territory, 'Committee of Privileges', viewed on 18 April 2018
<https://parliament.nt.gov.au/committees/privilege>

⁴ Legislative Assembly of the Northern Territory, 'House Committee', viewed on 18 April 2018
<https://parliament.nt.gov.au/committees/house>

⁵ Sessional Order 10

the annual reports of the Commissioner and Inspector, and examines trends in similar bodies elsewhere.

Sessional Committees

- 1.10 Sessional committees are appointed for the duration of the current session of the Assembly. A session refers to the series of sittings from:

the calling together of the Assembly after a general election until the Assembly is prorogued, or from the calling together of the Assembly after a prorogation until the Assembly is next prorogued.⁶

- 1.11 Sessional committees are appointed by the Assembly, which also decides on the objectives and purpose of the committee, or its 'terms of reference'. Terms of reference for sessional committees tend to be reasonably broad and no specific timeframe is set for reporting.
- 1.12 The 13th Assembly's Legislation Scrutiny Committee, which considered bills referred by the Assembly, was a sessional committee.

Select Committees

- 1.13 Select committees are established by the Assembly to investigate and report on specific matters. Their terms of reference are quite specific and include a set date for reporting to the Assembly. Select committees cease to exist after their final report is tabled.
- 1.14 The 13th Assembly's Select Committee on Opening Parliament to the People was a select committee, as are the annual Estimates committees.

History

- 1.15 Table 1 below provides an overview of the committees of the Legislative Assembly of the Northern Territory over the fourteen Assemblies. The first four Assemblies had five standing committees: House, Privileges, Standing Orders, Publications, and Subordinate Legislation and Tabled Papers.
- 1.16 The Public Accounts Committee was established as a sessional committee in the fourth Assembly on 17 June 1986 and included in the Standing Orders in the fifth Assembly from 23 August 1988.⁷
- 1.17 The Constitutional Development Committee was first established as a select committee during the fourth Assembly. It became a sessional committee in successive Assemblies through to the end of the seventh Assembly in August 1997. Its role was then taken over by the Legal and Constitutional Affairs Committee when it was established as a standing committee in the eighth Assembly.

⁶ Standing Order 2

⁷ Standing Order 177

1.18 During the eighth Assembly the Publications Committee and the Subordinate Legislation and Tabled Papers Committee were combined to form the Subordinate Legislation and Publications Committee.

1.19 The Standing Committee on the ICAC was established in the 13th Assembly on 20 February 2020.

Table 1: Committees of the Legislative Assembly of the Northern Territory

| Assembly | Standing | Sessional | Select |
|-----------------|---|--|---|
| 1 st | House Standing Orders Privileges | | Chamber Re-furnishing & Precinct Security Landlord & Tenant (Control of Rents) Ordinance Regional Councils for Social Development Stabilisation of Land Prices |
| 2 nd | Subordinate Legislation & Tabled Papers | New Parliament House Site | |
| 3 rd | | Environment | |
| 4 th | Publications | New Parliament House Public Accounts Environment | Constitutional Development Communications Technology |
| 5 th | House | New Parliament House Constitutional Development Environment Use & Abuse of Alcohol by the Community | Communications Technology |
| 6 th | Standing Orders | | |
| 7 th | Privileges Subordinate Legislation & Publications Public Accounts | | Euthanasia Effects of Poker Machines in Community Venues Interactive Television Gaming |
| 8 th | House | Environment | Territory Food Prices |
| 9 th | | Environment & Sustainable Development | Substance Abuse in the Community Estimates Government Owned Corporation Scrutiny |

| Assembly | Standing | Sessional | Select |
|------------------------|--|--|---|
| 10th | Standing Orders (since February 2009 also performs role of Committee of Members' Interests) Privileges | | Substance Abuse in the Community Sport & Youth Estimates Government Owned Corporation Scrutiny |
| 11th | Subordinate Legislation and Publications Public Accounts Legal and Constitutional Affairs | Environment & Sustainable Development Council of Territory Co-Operation | Youth Suicides in the NT Estimates Government Owned Corporation Scrutiny |
| 12th | House Standing Orders (also performs role of Committee of Members' Interests) Privileges Public Accounts Legal & Constitutional Affairs (also performs role of Subordinate Legislation & Publications Committee) | Northern Territory's Energy Future | Foetal Alcohol Spectrum Disorder Fuel Price Disclosure Bill Scrutiny Port of Darwin Estimates Government Owned Corporations Scrutiny Ice |

| Assembly | Standing | Sessional | Select |
|------------------------|---|--|--|
| 13th | House Standing Orders (also performs role of Committee of Members' Interests) Privileges Public Accounts Legal & Constitutional Affairs (dissolved August 2017) Subordinate Legislation & Publications Committee (dissolved August 2017) Standing Committee on the ICAC | Economic Policy Scrutiny (dissolved November 2019) Social Policy Scrutiny (dissolved November 2019) Legislation Scrutiny Committee (established November 2019) | Opening Parliament to the People Estimates Northern Territory Harm Reduction Strategy for Addictive Behaviours |
| 14th | House Standing Orders (also performs role of Committee of Members' Interests) Privileges Public Accounts Legal & Constitutional Affairs (also performs the duties of the Subordinate Legislation and Publications Committee) Standing Committee on the ICAC | | |

- 1.20 From October 2012 the Assembly assigned the functions of the Subordinate Legislation and Publications Committee to the Legal and Constitutional Affairs Committee (LCAC) so one committee performed both roles. As indicated above, the LCAC was again assigned the duties of the Subordinate Legislation and Publications Committee in the 14th Assembly.
- 1.21 The Estimates Committee and the Government Owned Corporations Scrutiny Committee are select committees which have been appointed each year since 2002. The Estimates Committee examined and reported on the estimates of proposed expenditure contained in the annual Appropriation Bill (the Budget) and related budget documents. The Government Owned Corporations Scrutiny Committee examined and reported on the activities, performance, practices and financial management of the Power and Water Corporation, Jacana Energy and Territory Generation with reference to their annual statements of corporate intent.
- 1.22 As of the 13th Assembly, the Estimates Committee examined and reported on both estimates of proposed expenditure contained in the annual Appropriation Bill and related budget documents, and the activities, performance, practices and

financial management of the Power and Water Corporation, Jacana Energy and Territory Generation with reference to their annual statements of corporate intent.

- 1.23 In February 2020, the Standing Committee on the ICAC was established and designated by the Assembly to receive reports and perform other functions in relation to the Independent Commissioner Against Corruption.

Membership

- 1.24 Membership of committees is determined by the Assembly and should reflect the composition of the Assembly.
- 1.25 The Assembly appoints Members to committees by motion moved on notice.⁸ As a matter of practice, a motion appointing a committee will provide a mechanism for appointment, such as nomination in writing to the Speaker by the relevant whip. When the Assembly is not meeting the relevant whip can nominate the appointment or discharge of committee members.⁹
- 1.26 With the exception of standing committees concerned with how the Assembly is run (such as the Standing Orders and House committees), it is rare for Ministers to be appointed as committee members, whether or not they were responsible for moving the motion to appoint the committee. Given the role of investigatory committees in scrutinising the executive (the Government) it is generally considered inappropriate for Ministers to serve on them. However, during the 12th Assembly the Minister for Community Services was appointed to the Select Committee on Foetal Alcohol Spectrum Disorder, and the Chair of the Committee on the Northern Territory's Energy Future continued as chair after appointment to the Ministry.
- 1.27 Neither the Speaker nor Deputy Speaker shall be appointed to a committee unless required by Standing or other order, or unless they consent.¹⁰ The Speaker must be a member of the Standing Orders and House committees.¹¹ The Speaker was nominated and consented to appointment to the Legal and Constitutional Affairs Committee during the 11th and 12th Assemblies and chaired the Select Committee on Foetal Alcohol Spectrum Disorder and was a member of the Standing Committee on the ICAC during the 13th.
- 1.28 Committee service is a duty that may be conferred by the Assembly. A Member's consent is not required for appointment to a committee and they cannot resign from a committee. The Assembly may discharge Members from a committee and appoint replacements, or if the Assembly is not sitting, the relevant whip, or in the case of an independent Member, that Member, may give notice of a nomination or discharge to the Speaker, which is effective immediately and confirmed when the Assembly next sits.¹²

⁸ Standing Order 179

⁹ Standing Order 181

¹⁰ Standing Order 182

¹¹ Standing Orders 173 & 175

¹² Standing Orders 179 & 181

- 1.29 Under the Remuneration Tribunal Determination No. 1 of 2020, a chair of a scrutiny committee (any committee excluding the House, Standing Orders, Privileges and Members' Interests committees) receives an additional salary of office of 20 percent of the base remuneration and committee members receive an additional 10 percent.
- 1.30 Members who have been suspended from the service of the Assembly are ineligible to attend or participate in Assembly committees during the period of their suspension.¹³

Substitute and participating Members

- 1.31 A Member of the Government or Opposition or a non-party aligned Member may substitute for another by the relevant Whip or non-party aligned Member nominating the substitution in writing to the chair for the relevant period of time or inquiry. A Member so substituted is for all purposes a Member of the committee for the nominated period. However, a Member substituting for the chair or deputy chair does take on those roles by being substituted for that Member.¹⁴
- 1.32 Without being substituted, any Member can participate in a committee's meetings, unless the committee orders otherwise. A Member participating in a committee's meeting while not being a Member of the committee may not vote and does not count for the purpose of quorum.¹⁵

Conflict of Interest

- 1.33 As noted in *the Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act 2008*:

Public confidence in the integrity of parliamentary decision-making is essential to an effective democracy. In order to maintain that confidence, it is essential, especially in a relatively small community, for members to avoid any suggestion that they are exploiting their position to gain an improper personal benefit.¹⁶

- 1.34 Under the *Legislative Assembly (Disclosure of Interests) Act 2008*, Members must provide the Clerk with a statement specifying their registrable interests within 28 days of making and subscribing an oath or affirmation as a Member,¹⁷ including those of their spouse or de facto partner and any dependent children.¹⁸ Registrable interests under the Act include both pecuniary (monetary) interests and non-pecuniary interests.¹⁹

¹³ Standing Order 54

¹⁴ 14th Assembly Sessional Order 11

¹⁵ Standing Order 193(2)

¹⁶ Cl 1, Part 2, Schedule: Code of Conduct and Ethical Standards, *Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act 2008*

¹⁷ *Legislative Assembly (Disclosure of Interests) Act 2008* s 4

¹⁸ *Legislative Assembly (Disclosure of Interests) Act 2008* s 3 (a & b)

¹⁹ *Legislative Assembly (Disclosure of Interests) Act 2008* schedule

Pecuniary Interest

- 1.35 Under Standing Order 183, Members are ineligible to sit on a committee if they have a 'particular direct pecuniary interest' in a matter under inquiry by the committee. Where a Member's eligibility to sit on a committee is challenged due to a pecuniary interest, the committee may direct the matter to the Assembly for resolution.²⁰

Non-pecuniary Interest

- 1.36 The Members' Code of Conduct and Ethical Standards provides that 'Members must avoid conflicts, or apparent conflicts, between their private interests and their official functions'.²¹
- 1.37 While Standing Orders make no specific provision regarding non-pecuniary conflicts of interests, whenever a Member becomes aware of a potential or actual conflict of interest during the course of an inquiry, it is accepted practice for them to:
- make an oral declaration in the form of a statement or written statement on the matter at a meeting of the committee at an early stage of the particular inquiry.²²
- 1.38 If the conflict is likely to affect the Member's judgment to a significant degree, the Member should excuse themselves from further participation in the committee inquiry. It may also mean that the Member must be discharged from the committee and a replacement Member appointed.²³
- 1.39 Factors to consider are the degree to which the actual or potential conflict may affect the Member's judgment in conducting the inquiry, and whether the conflict affects the Member to a greater extent than most citizens.

²⁰ Standing Order 183

²¹ *Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act 2008*, clause 2, Part 2, Schedule: Code of Conduct and Ethical Standards,

²² D. R. Elder (ed), *House of Representatives Practice (Seventh Edition)*, Department of the House of Representatives, Canberra ACT, 2018 p. 657

²³ D. R. Elder (ed), *House of Representatives Practice (Seventh Edition)*, Department of the House of Representatives, Canberra ACT, 2018 p. 657

2 Work of Committees

Sources

- 2.1 Depending on their terms of reference, Assembly committees can be referred to inquire into a matter by a variety of sources including:
- Acts of Parliament
 - Standing Orders
 - Sessional Orders
 - Resolutions of the Assembly
 - Ministers, the Speaker, or the Administrator
 - Self-referral.
- 2.2 At times, Acts of parliament may require that a committee be established. These are 'statutory committees'. Statutory committees generally have a long term goal and the legislation usually provides for the committee to be appointed at the commencement of each Parliament, as well as stating its terms of reference.
- 2.3 The terms of reference of committees sometimes enable Ministers, the Speaker or the Administrator to refer a matter to a committee. Any Member may move a motion for the Assembly to refer a matter to a committee or to establish a committee. A Member may also move to refer a petition to the Public Accounts committee to consider whether the petition should be debated.²⁴
- 2.4 Committees may also start their own inquiries if their terms of reference allow them to refer matters for investigation to themselves – see for example the Public Accounts Committee.

Committee Inquiry Process

Research

- 2.5 Once an inquiry is referred to a committee or a committee decides to undertake an inquiry, the first step is to research the matter. Research is undertaken by the Committee Office to:
- identify the key issues as they relate to the committee's terms of reference.
 - identify key stakeholders and those with expertise in the issues under inquiry.
 - find options for gathering evidence.
 - assist with the development of an inquiry work program.

Submissions

- 2.6 The second step in the usual inquiry process is to call for or invite written submissions. Committees may choose to use a number of methods to call for submissions, including media releases, direct and targeted contact through letters

²⁴ 14th Assembly Sessional Order 12

and emails, the committees' email subscription service, the Legislative Assembly's website, Facebook and Twitter and print and radio advertisements.

- 2.7 Submissions should be prepared specifically for the purposes of the inquiry, be relevant to the committee's terms of reference, and include the name and contact information of the author. All submissions received are tabled at a meeting of the committee with copies provided to each committee member. Providing that the documents meet the criteria to be accepted as a submission, the committee will make a formal decision about the receipt of the submission and, where applicable, authorising its publication. As submissions are authorised for publication they are uploaded to the Assembly's website.

Hearings, Visits and Site Inspections

- 2.8 In addition to private meetings where committee members discuss 'domestic' matters, deliberate on evidence, receive briefings, or consider draft reports, the Standing Orders allow committees to conduct proceedings 'using any means approved by the Assembly'.²⁵ Committees frequently gather information through hearings, site visits and inspections.
- 2.9 Witnesses are usually invited to give evidence at a public hearing on the basis of their written submission or their expertise in the area under inquiry (see also chapters 3 & 4). While most oral evidence is taken in public hearings, the committee may choose to take evidence which raises sensitive issues in private (also referred to as taking evidence *in-camera*). Committees may also conduct hearings via video or teleconference as long as the committee members and witnesses are able 'to speak to and hear each other at the same time regardless of location'.²⁶
- 2.10 Public hearings may take the form of a round table hearing or public forum as a means of bringing together people who wish to contribute to an inquiry. One of the main benefits of this approach is that they can assist the interchange of views amongst witnesses as well as committee members. They are also a less intimidating format.
- 2.11 A committee may also collect evidence by inspecting a site. Inspections may assist the committee to put into context issues raised by the inquiry. Similarly, a committee may decide to meet with community organisations and professional and business associations for private or public discussions. Wherever possible transcripts are made of all hearings, regardless of the format of the hearing. Where this is not possible, such as site inspections, minutes of the proceedings are taken.
- 2.12 In choosing the way to collect evidence, committees need to maximise accessibility and ensure an appropriate level of control. The immunity of words spoken in Parliament extends to 'all words spoken and acts done in the course of, or for the purposes of or incidental to, the transacting of the business of the

²⁵ Standing Order 189

²⁶ Standing Order 189(2)

Assembly or of a committee'.²⁷ Care must be taken to ensure this privilege is not abused, such as by persons making vexatious allegations against another person at a round table style meeting. Consideration should also be given to the committee's ability to use evidence obtained through less formal means due to, for example, limits on the ability to record what is said.

- 2.13 Standing Order 228 allows committee proceedings to be broadcast according to rules set by the Speaker and subject to any conditions set by the committee. The Speaker set out the rules for broadcasting in annual determinations.

Reports

- 2.14 Committees report to the Assembly on the outcome of their inquiries. These reports may take various forms. The most common is a final report. For a complex or long inquiry a committee may submit one or more interim reports. These reports may deal with the committee's method of inquiry, or report on the progress of the inquiry, or the committee's recommendations on particular aspects of the inquiry.

Committees may also report in the form of a discussion paper that identifies key issues and views the committee is seeking further comment on. Standing Order 195 provides for committees to report to the Assembly from time to time. A committee's terms of reference may also require that they table an annual report.

Adopting and Tabling Reports

- 2.15 Standing Order 196 sets out the following procedures for a committee's consideration of a draft report:

- (1) The chair of a committee will prepare a draft report and present it to the committee at a meeting convened for report consideration.
- (2) The report may be considered at once if copies have been circulated in advance to each Member of the committee. The report will be considered paragraph by paragraph. When consideration of the chapters of the report is completed, the appendices are then considered in order.
- (3) After the draft report has been considered, the whole or any paragraph may be reconsidered and amended.
- (4) A Member objecting to any portion of the report may vote against it or move an amendment when the particular paragraph or appendix is under consideration.
- (5) A Member protesting about the report or dissenting from all or part of it may add a protest or dissenting report from the main report.

- 2.16 Standing Order 197 further provides that:

²⁷ *Legislative Assembly (Powers and Privileges) Act 1992*, s 6(2)

If any Member, other than the Member chairing the committee, submits a draft report to the committee, the committee first decides which report will proceed.

- 2.17 While Standing Orders state that a report shall be considered paragraph by paragraph, committees may agree to consider the report by chapter or as a whole. When the report has been considered and all paragraphs, appendices and the title have been agreed to, with or without amendment, the chair will pose the question ‘that the draft report (as amended) be adopted.’²⁸
- 2.18 The chair signs a copy of the adopted report for tabling in the Assembly. A copy of relevant minutes of committee meetings is also tabled with the report. When tabling the report the chair may make a statement.²⁹ Any Member may also move that the report be noted or that the report be adopted.³⁰ Either of these motions allow the report to be debated. If the Assembly adopts the report then it is agreeing to the recommendations of the report.
- 2.19 Where a committee report recommends that action be taken by the Government, Standing Order 201 requires that the Clerk refer the report to the relevant Ministers who must, within six months of a report being tabled, report to the Assembly what action, if any, the Government proposes to take in relation to each of the committee’s recommendations. If a Government response to a committee report has not been tabled within six months of the report being tabled, the relevant Minister is required to present to the Assembly a signed statement stating the reasons for the delay in presentation of the response and make themselves available to appear before the committee to answer questions on the statement.³¹ While the Standing Order anticipates a written response, the Assembly has accepted responses given in the course of debate. Under Standing Order 201(5) the Speaker is required to provide a report to the Assembly twice each year on the status of Government responses to committee reports.

Protest or Dissenting Reports

- 2.20 The adopted report represents the opinions of the committee. Where not all members agree, the conclusions and recommendations agreed to by the majority are those of the committee. Standing Order 196(5) allows committee members to add a protest or dissenting report to a committee’s report. While the difference between the two is not defined within the Standing Orders, the *House of Representatives Practice* suggests that:

A distinction would be to associate a protest with procedural matters, and dissent with opposition to a committee’s conclusions or recommendations.³²

²⁸ Standing Order 198

²⁹ Standing Order 200

³⁰ Standing Order 200

³¹ Standing Order 201(4)

³² D. R. Elder, (ed) *House of Representatives Practice (Seventh Edition)*, Department of the House of Representatives, Canberra ACT, 2018 p. 726

- 2.21 Protests or dissents can only be attached after a committee has agreed to a report and 'must be signed by the Member or Members protesting or dissenting'.³³ A Member or group of Members who advise that they wish to present a protest or dissenting report do not need authorisation from the committee since this power resides with the individual, not with the committee. Although the authors of a protest or dissenting report do not have to circulate it to the chair or other members of the committee, not to do so would generally be regarded as discourteous. Moreover, this provision does not preclude 'action by a committee to direct the circulation of dissenting reports to committee members on their receipt by the secretariat'.³⁴
- 2.22 Where a Member or Members wish to add a protest or dissent it is usual practice for the committee to set a date for dissents to be provided to the secretariat. As is the case with any committee report, a protest or dissenting report must be relevant to the committee's reference. Protests or dissents are attached to the committee's report.
- 2.23 Alternative methods of recording dissent include:
- moving amendments to the draft report which are to be recorded in the minutes.
 - submitting an alternative draft report to the committee (SO 277).
 - making a statement in the Assembly, with leave, when the report is tabled.
 - stating the protest or dissent in debate on any motion moved in relation the report.
- 2.24 The *House of Representatives Practice* further notes that in extreme circumstances Members may record their dissent by seeking discharge (effectively resigning) from the committee.³⁵

Specialist Functions

- 2.25 In addition to conducting inquiries, certain committees perform a range of specialist functions of an on-going nature.

Bill Scrutiny

- 2.26 The 13th Assembly referred Bills to committees for inquiry and report on whether the Assembly should pass the Bill or amend the Bill, whether the Bill has sufficient regard to the rights and liberties of individuals, and whether the Bill has sufficient regard to the institution of Parliament. In August 2017 the Social Policy Scrutiny Committee and Economic Policy Scrutiny Committee were established for this purpose. In November 2019 they were dissolved and replaced by the Legislation

³³ Standing Order 199(3)

³⁴ D. R. Elder, (ed) *House of Representatives Practice (Seventh Edition)*, Department of the House of Representatives, Canberra ACT, 2018 p. 727

³⁵ D. R. Elder, (ed) *House of Representatives Practice (Seventh Edition)*, Department of the House of Representatives, Canberra ACT, 2018 p. 727

Scrutiny Committee. Bill scrutiny committees were not re-established in the 14th Assembly.

Subordinate Legislation

2.27 As noted, in the 14th Assembly, the Legal and Constitutional Affairs Committee reviews and reports on all legislative instruments that are required by law to be tabled in the Assembly. In doing so, the committee assists the Assembly by alerting it to any concerns that may warrant disallowance of the instrument. If the committee's examination alerts it to issues it is concerned about but do not warrant disallowance, it will raise the issues directly with the responsible Minister.

Auditor-General Reports

2.28 After a report of the Auditor-General is tabled, the Public Accounts Committee meets with the Auditor-General to discuss any issues raised in the report and identify which issues need follow-up by inviting the chief executive of the relevant agency to a hearing with the committee.

Statutory Body Reports

2.29 The Public Accounts Committee examines reports tabled in the Assembly by statutory bodies, including the recommendations of the Electoral Commissioner tabled under section 313 of the *Electoral Act*, and may invite statutory officers to appear before the committee to discuss matters in further detail.

Estimates

2.30 The Estimates Committee is a select committees which has been established each year since 2002. Its primary purpose is to examine and report on the estimates of proposed expenditure contained in the annual Appropriation Bill (Budget) and the government owned corporations' (Power and Water Corporation, Territory Generation, and Jacana Energy) annual statements of corporate intent. Prior to the 13th Assembly a separate Government Owned Corporations Scrutiny Committees was established to examine those corporations.

2.31 To examine the Appropriation Bill, the Estimates Committee holds hearings with each Minister and the relevant agencies. The hearings are included in the Assembly's meeting schedule, and are followed by a meeting of the Assembly to pass the Appropriation Bill.

2.32 Questions taken on notice and their answers are made available on the Assembly's website along with the transcripts of proceedings and the committee's report.

2.33 The Assembly determines the terms of reference for the Estimates Committee each year when establishing the committee. Details of the Estimates process are outlined in the annual *Estimates Committee Information Manual* published by the Committee Office.

Statehood

- 2.34 During the ninth, 10th, 11th and 12th Assemblies the Legal and Constitutional Affairs Committee was given functions relating to developing proposals for statehood.
- 2.35 On 21 May 2003 the then Chief Minister, the Hon Clare Martin MLA, announced that the Government would work with the community to achieve statehood based on a Territory constitution. The Statehood Steering Committee was then established to advise the Standing Committee on Legal and Constitutional Affairs.
- 2.36 In accordance with the recommendations of the Statehood Steering Committee, in December 2010 the Assembly gave the Legal and Constitutional Affairs Committee the function of appointing a Northern Territory Constitutional Convention Committee to assist with implementing the Statehood Program.
- 2.37 Following the Northern Territory general election of August 2012, the Attorney-General referred the *Options for the Northern Territory to become a State* to the Legal and Constitutional Affairs Committee, including:
- a) implementing the recommendations of the former Statehood Steering Committee in its *Final Report and Recommendations* tabled on 6 December 2010
 - b) planning and implementing constitutional conventions and the election of delegates; and
 - c) promoting public understanding of, and participation in, the development of proposals for a constitution for the Northern Territory.³⁶

³⁶ Legislative Assembly of the Northern Territory, 'Legal and Constitutional Affairs Committee', viewed on 18 April 2018, <https://parliament.nt.gov.au/committees/previous/LCAC>

3 General Committee Procedures and Issues

Standing Orders

- 3.1 Section 30 of the *Northern Territory (Self-Government) Act 1978* (Cth) enables the Legislative Assembly to:

make standing rules and orders, not inconsistent with a law of the Territory, with respect to the order and conduct of its business and proceedings.³⁷

These standing rules and orders provide the general framework for the procedures of Assembly committees.

- 3.2 Chapter 16 of the Standing Orders refers to establishing Standing Committees and the general procedures to be followed by Assembly committees, and Chapter 17 details procedures to be followed when summoning and examining witnesses.

Sessional and Other Orders

- 3.3 The Assembly can pass orders in addition to or superseding the Standing Orders. These orders have effect until the end of the session or until they are superseded.

Powers of Committees

- 3.4 Standing Orders, Sessional Orders, resolutions appointing committees, and enabling Acts give committees their powers. Assembly committees are also subject to the provisions of the *Legislative Assembly (Powers and Privileges) Act 1992*. As noted in section 6:

proceedings in Parliament means all words spoken and acts done in the course of, or for the purpose of or incidental to, the transacting of the business of the Assembly or of a committee.³⁸

- 3.5 Powers explicitly granted to committees by the Standing Orders include the capacity to:
- elect a chair and deputy chair (SO 186).
 - appoint subcommittees (SO 187).
 - conduct proceedings using approved means (SO 189(1)).
 - conduct proceedings using audio-visual or audio links (SO 189(2)).
 - conduct proceedings at any time or place as it sees fit, except while the Assembly is meeting unless permitted to do so by order of the Assembly (SO 189(3)).
 - invite or summon witnesses and request or require documents to be produced (SO 190).

³⁷ *Northern Territory (Self-Government) Act 1978* (Cth) s 30

³⁸ *Legislative Assembly (Powers and Privileges) Act 1992*, s 6(2)

- consider and make use of the evidence and records of similar committees appointed during previous Assemblies (SO 191).
 - authorise publication of evidence given and documents presented to a committee (SO 194).
 - report from time to time (SO 195).
- 3.6 To determine what authority has been given to a committee it is necessary to consider the Standing and Sessional Orders, the committee's resolution of appointment, the provisions of any enabling Act, and any other amendments, orders or resolutions agreed to by the Assembly after the committee's appointment.

Subcommittees

- 3.7 Any committee may appoint a subcommittee of three or more of its Members.³⁹
- 3.8 A committee may not give the subcommittee greater powers than it holds, or powers which they have not been empowered to give.
- 3.9 While a subcommittee may authorise evidence it has received to be published, Standing Orders only allow full committees to 'publish or table reports, discussion papers, media releases or other documents.'⁴⁰ Any report of a subcommittee is to be considered by its parent committee, which may adopt that report or use that information in its deliberations.

Privilege

- 3.10 Parliamentary privilege refers to the special rights and immunities that apply to the Legislative Assembly, its Members and committees which are considered essential for the proper operation of Parliament. These rights and immunities allow the Legislative Assembly to:
- meet and carry out [its] proper constitutional role, for committees to operate effectively, for Members to discharge their responsibilities to their constituents, and for others involved in the parliamentary process to carry out their duties and responsibilities without obstruction or fear of prosecution.⁴¹
- 3.11 Section 12 of the *Northern Territory (Self-Government) Act 1978* (Cth) allows the Legislative Assembly to establish laws declaring the power (other than legislative powers), privileges and immunities of the Legislative Assembly, its Members and committees as long as they do not exceed those of the 'House of Representatives, or of the Members or committees of that House, respectively'.⁴²

³⁹ Standing Order 187

⁴⁰ Standing Order 194

⁴¹ D. R. Elder, (ed) *House of Representatives Practice (Seventh Edition)*, Department of the House of Representatives, Canberra ACT, 2018 p. 733

⁴² *Northern Territory (Self-Government) Act 1978* (Cth), s 12

The Act also allows the Legislative Assembly to decide how such privileges and immunities may be exercised or upheld.⁴³

3.12 The privileges and immunities of the Legislative Assembly are set out in the *Legislative Assembly (Powers and Privileges) Act 1992*. Under this Act, committee proceedings are considered to be proceedings in parliament.⁴⁴

3.13 The privilege of freedom of speech is generally considered the most important privilege of Members. Section 6(1) of the *Legislative Assembly (Powers and Privileges) Act 1992* says that to avoid any doubt in relation to this privilege 'the provisions of article 9 of the Bill of Rights 1688 apply in relation to the Assembly.'⁴⁵ Accordingly, article 9 provides that:

the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.⁴⁶

Consequently, Members cannot be sued or prosecuted for anything they may say in the course of proceedings in the Parliament.

3.14 While Members can express themselves as they see fit, it is incumbent upon Members not to abuse the privilege. Standing Order 233 says that when speaking in the Assembly or a committee, Members are to take the following matters into account:

- (a) the need to exercise their valuable right of freedom of speech in a responsible manner
- (b) the damage that may be done by allegations made in the Assembly to those who are the subject of such allegations and to the standing of the Assembly
- (c) the limited opportunities for persons other than Members of the Assembly to respond to allegations made in the Assembly
- (d) the need for Members, while fearlessly performing their duties, to have regard to the rights of others
- (e) the desirability of ensuring that statements reflecting adversely on persons are soundly based.

3.15 Witnesses who give evidence to committees have the same protection regarding the privilege of freedom of speech as Members, and may not be sued or prosecuted for statements made when giving evidence to a committee.⁴⁷ Privilege does not depend on the witness taking the oath, or on whether the witness appears voluntarily or by summons. As noted in Standing Order 207:

All witnesses examined before the Assembly, or any committee, are entitled to the protection of the Assembly in respect of anything that may be said by them in their evidence.

⁴³ *Northern Territory (Self-Government) Act 1978* (Cwlth), s 12

⁴⁴ *Legislative Assembly (Powers and Privileges) Act 1992*, s 6(2)

⁴⁵ *Legislative Assembly (Powers and Privileges) Act 1992*, s 6(2)

⁴⁶ A.C.T. Legislation Register, 'Bill of Rights 1688',

http://www.legislation.act.gov.au/a/db_1792/default.asp (retrieved 23 May 2012).

⁴⁷ *Legislative Assembly (Powers and Privileges) Act 1992*, s 6(2)

- 3.16 Under the *Legislative Assembly (Powers and Privileges) Act 1992* it is an offence for anyone to influence, or attempt to influence, a witness in respect of any evidence given or to be given before a committee, or inflict a penalty or injury on a witness, or deprive them of a benefit because of evidence they propose to give or have given to a committee.⁴⁸
- 3.17 Privilege also applies to committee documents and files. A number of consequential restrictions on using such documents in court are set out in section 6 of the *Legislative Assembly (Powers and Privileges) Act 1992*.
- 3.18 Section 7 of the Act also says that committee members shall not be required to attend before a court or tribunal, or be arrested or detained in a civil cause on a day on which the committee meets, or in the five days before or after a committee meeting day.⁴⁹ Witnesses are also immune from arrest in a civil cause or attendance before courts, but only on the day that they are required to attend a committee hearing.⁵⁰

Contempt

- 3.19 Contempt is related to the concept of privilege and refers to actions which amount to disobedience to, or open disrespect of, the orders of a committee given in the proper exercise of its authority. However, section 5 of the *Legislative Assembly (Powers and Privileges) Act 1992* imposes the following qualification which must be taken into account in the consideration of possible contempt:

Conduct (including the use of words) does not constitute an offence against the Assembly unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by the Assembly or a committee of its authority or functions, or with the free performance by a Member of the Member's duties as a Member.⁵¹

- 3.20 Under the Act, the Assembly may impose fines or terms of imprisonment for offences against the Assembly.⁵² Offences specified in the Act can also be prosecuted in the courts. For example, it is an offence for a person who is summonsed to appear before a committee to refuse or fail, without reasonable excuse, to appear at the time and place specified in the summons; take an oath if required; produce documents specified in the summons; answer questions; or give false or misleading evidence, including submitting documents known to be falsified.⁵³
- 3.21 Unauthorised disclosure of committee evidence may be an offence under section 22 of the Act.⁵⁴ Further, unauthorised disclosure of a committee's 'evidence, documents, proceedings and reports' is prohibited by Standing Order 194 and could be counted as an offence against the Assembly under section 25 of the

⁴⁸ *Legislative Assembly (Powers and Privileges) Act 1992*, s 20

⁴⁹ *Legislative Assembly (Powers and Privileges) Act 1992*, s 6

⁵⁰ *Legislative Assembly (Powers and Privileges) Act 1992*, s 7(3)

⁵¹ *Legislative Assembly (Powers and Privileges) Act 1992*, s 5

⁵² *Legislative Assembly (Powers and Privileges) Act 1992*, s 25

⁵³ *Legislative Assembly (Powers and Privileges) Act 1992*, s 21

⁵⁴ *Legislative Assembly (Powers and Privileges) Act 1992*, s 22

Act.⁵⁵ Any unauthorised disclosure of committee material, particularly evidence which has been taken in private, may damage the confidence and trust of witnesses and compromise the committee's ability to gather evidence.

- 3.22 Insofar as it affects the committee's operations, the committee will deal with any contempt arising, such as by requiring a person causing disturbance to withdraw, or taking action to encourage or compel a reluctant witness. However, should the committee not be able to resolve the matter, or if it considers that an offence has been committed that should be dealt with, the committee may report the situation to the Assembly, which may then refer it to the Committee of Privileges for investigation.

In Camera Evidence

- 3.23 The usual practice is to hold all hearings in public as this promotes public accountability and allows the committee to freely use any evidence gathered. However, a committee may choose to hear all or part of a hearing in private, also referred to as '*in camera*'.⁵⁶
- 3.24 Witnesses must be given the opportunity to ask to give evidence in private and to state their reasons for the request. The committee will consider these requests and give reasons if they are denied. Whether evidence is taken in private is wholly up to the committee, which will typically consider the public interest and any disadvantage that the witness or another party may suffer if the evidence is disclosed.
- 3.25 When a witness asks for evidence to be given in private during a public hearing, the chair must suspend the hearing while the committee decides the matter. In practice, a committee may decide to hear a witness in private without discussion in a private meeting. However, the chair may request that all visitors (everyone except committee members and the secretariat) leave the room while the committee discusses the request in private. The chair may ask that the witness also leave the room or ask them to speak to the committee on the matter.
- 3.26 If the committee agrees to take evidence in private, the chair must formally end the public hearing and ensure that everyone except the committee, witness and secretariat staff leave the room. The chair will also advise media representatives to remove any recording equipment from the room. The doors should be closed and precautions taken to ensure no unauthorised person enters the room. Hansard staff must be advised that the public hearing has come to a close and to begin a separate *in camera* transcript.
- 3.27 Where evidence is taken in a private session, the committee must inform the witness that while it is only in the most extraordinary circumstances that the committee will table in the Assembly or publish evidence given in private without

⁵⁵ *Legislative Assembly (Powers and Privileges) Act 1992*, s 25

⁵⁶ Standing Order 189(1)(b)

consent, it is within the power of the committee to do so and the Assembly has the power to order the production and publication of such evidence.⁵⁷

Sub Judice Convention

3.28 Committees are bound by the *sub judice* convention, which means they do not discuss matters that are to be considered by a court. This is to prevent committee proceedings interfering with the course of justice. The *sub judice* convention is imposed by the Assembly on itself and there is no legislation or Standing Order specifically on the matter.⁵⁸ The convention applies differently to various types of proceedings depending on the risk that discussion may interfere with the judicial process. Discussion is normally avoided on criminal matters from the time charges are laid, particularly if the matter might go before a jury. For civil matters, discussion is normally avoided if proceedings have commenced.⁵⁹

3.29 Although the convention is not traditionally applied to quasi-judicial bodies, such as royal commissions, decisions are made on a case by case basis. The principal distinctions that have been recognised to date are that:

- Matters ... which are concerned with the conduct of particular persons should not be referred to in proceedings if, in the opinion of the chair, there is a likelihood of prejudice being caused as a result of the references in the [committee].
- Matters ... dealing with broader issues of [Territorial] importance should be able to be referred to in proceedings unless, in the opinion of the chair, there are circumstances which would justify the convention being invoked to restrict reference in the [committee].⁶⁰

3.30 Where a witness or Member raises matters relevant to current or future legal proceedings, the chair may intervene, whether or not a point of order is made, to advise that matters subject to the convention should not be discussed. The decision whether or how to apply the *sub judice* convention is one for the chair; however, the chair will usually take into consideration the views of the committee. The committee may also choose to take the evidence in private to avoid the risk of interfering with judicial proceedings.⁶¹

Prorogation

3.31 Prorogation terminates a session of the Assembly and puts it into a period of recess. The next session of the Assembly starts on the first meeting day following a prorogation and concludes in the same manner. Both prorogation and

⁵⁷ Standing Order 210(8)

⁵⁸ D. R Elder (ed), *House of Representatives Practice (Seventh Edition)*, Department of the House of Representatives, Canberra ACT, 2018 p. 714

⁵⁹ D. R Elder (ed), *House of Representatives Practice (Seventh Edition)*, Department of the House of Representatives, Canberra ACT, 2018 p. 521

⁶⁰ D. R Elder (ed), *House of Representatives Practice (Seventh Edition)*, Department of the House of Representatives, Canberra ACT, 2018 p. 524

⁶¹ D. R Elder (ed), *House of Representatives Practice (Seventh Edition)*, Department of the House of Representatives, Canberra ACT, 2018 p. 714

commencement of the next session are proclaimed by the Administrator. While the Government may ask the Administrator to prorogue the Assembly at any time during the four year parliamentary term, this has not been done during recent Assemblies. Consequently, prorogation normally only occurs prior to a general election.

- 3.32 Since the commencement of the first Assembly in 1974, there have only been two prorogations, other than those immediately prior to a general election. Both occurred during the fourth Assembly.

Effects of Prorogation

- 3.33 With prorogation all proceedings of the Parliament are suspended, all business on the Assembly's Notice Paper lapses, Sessional Orders cease to have effect and the Assembly may not meet until the time appointed by the Administrator.⁶² Prorogation also brings to an end all sessional and select committees and any referrals made by the Assembly to standing committees.
- 3.34 Standing committees (which are appointed for the life of the Assembly) continue to exist after prorogation (unless the Assembly is dissolved for a general election), although they cannot meet and transact business until a new session has commenced.⁶³ Any matter referred by the Assembly to a standing committee must be referred again to be continued, although referrals from other sources can be continued without being referred by the Assembly.
- 3.35 If select and sessional committees are to continue their activities in the new session, the committees and their membership must be re-appointed by a decision of the Assembly and their terms of reference renewed.⁶⁴

Role of Chair

- 3.36 The House of Representatives' *Working with Parliamentary Committees: A Guide for Committee Chairs* lists the following as the primary responsibilities of the chair:
- undertake a leadership role in achieving committee effectiveness;
 - conduct proceedings in an orderly and fair manner;
 - ensure the standing orders, and any other relevant requirements of the [Assembly] are applied appropriately;
 - on behalf of the committee, and subject to its direction, direct such administrative tasks as are necessary for the effective operation of the committee;
 - in giving administrative directions the chair should have cognisance of the possible views of committee Members and consult with other committee members as necessary. Strategic

⁶² D. R Elder (ed), *House of Representatives Practice (Seventh Edition)*, Department of the House of Representatives, Canberra ACT, 2018 p.234

⁶³ Acts of Parliament can empower a committee to operate during a prorogation, but this has not occurred in the Northern Territory.

⁶⁴ D. R Elder (ed), *House of Representatives Practice (Seventh Edition)*, Department of the House of Representatives, Canberra ACT, 2018 p.654

planning decisions affecting the conduct of the committee's business such as selection of witnesses, timetabling of hearings and report presentation arrangements must not be made without consulting the committee;

- ensure that witnesses before the committee are treated fairly and respectfully;
- as far as possible, ensure all committee Members have equal opportunity to contribute to the proceedings of the committee;
- ensure equal and timely access to evidence, correspondence and information provided to, or commissioned by, the committee for all committee members;
- respond promptly and comprehensively to any concerns raised by committee members; and
- ensure that the committee receives advice from the secretary in relation to matters of procedure and availability of resources to meet the proposed work plans for the committee.⁶⁵

3.37 The chair convenes committee meetings,⁶⁶ sets the agenda and maintains order at meetings. The chair of a committee has both a deliberative and a casting vote.⁶⁷

3.38 It is the chair's responsibility to prepare a draft report for the committee to consider.⁶⁸ This is done by the chair providing direction to the committee's secretariat about the preparation of the report. The chair also signs and tables reports adopted by the committee and makes a tabling statement.

3.39 Under Standing Order 194(4) a committee may decide to authorise a member of the committee to act as the official spokesperson for the committee and 'the committee determines the limits of the authorisation'. In most cases the committee will authorise the chair to undertake this role.

3.40 The chair is responsible for maintaining order. How this is done depends on the judgment of the chair in the circumstances. If a visitor is causing disorder, one option available to the chair is to require the visitor to leave. If that proves difficult, the chair may suspend proceedings until order is resumed. The committee may report any concerns regarding contempt by a visitor to the Assembly.

3.41 Disorderly conduct by Members is generally dealt with by the chair reminding Members that unruly behaviour may bring the committee and the Parliament into disrepute. Unless specifically provided, the chair of a committee does not have the authority to censure a Member for disorderly conduct. If the Member persists in disorderly behaviour after a warning, the committee may report the matter to the Assembly or a Member may raise the matter with the Assembly, such as by moving for the discharge of the Member concerned or raising a matter of privilege under Standing Order 229.

⁶⁵ D. R Elder (ed), *House of Representatives Practice (Seventh Edition)*, Department of the House of Representatives, Canberra ACT, 2018 p. 681

⁶⁶ Standing Order 185

⁶⁷ Standing Order 186(3)

⁶⁸ Standing Order 196(1)

Role of Committee Office

- 3.42 The Department of the Legislative Assembly is responsible for providing resources and services to support the operations of the Assembly and its committees. Departmental staff are required to provide services to all Members impartially.
- 3.43 The Committee Office provides support to most Assembly committees to allow them to fulfil their functions. This includes administrative, research, drafting and procedural services. The Office of the Clerk provides support to the standing committees which relate specifically to the functions and operations of the Assembly, including the Standing Orders, Privileges and House committees.

4 Committee Meetings

Preparation for the First Meeting

- 4.1 The first meeting of a committee may be held when Members have been appointed by a decision of the Assembly. Standing Order 185 states that:

Notice of meetings will be given by the secretary for the committee:

- (1) if there is no chair of the committee, at the direction of the Clerk
- (2) pursuant to resolution of the committee
- (3) at the direction of the chair of the committee, or
- (4) upon a request by a majority of the committee.

- 4.2 A committee may conduct proceedings at any time or place it sees fit, except while the Assembly is meeting.⁶⁹ Since Assembly meeting days are one of the more convenient times for committees to meet as all Members are in Darwin at that time, it is common practice for meetings to be held during the lunch suspension.

- 4.3 Unless the chair has been appointed, the committee secretary takes the chair at the first meeting. Prior to the first meeting, the committee secretary is responsible for preparing the agenda and associated briefing notes. The main items on the agenda are the formal announcement by the secretary of the formation of a duly constituted committee and its membership, and the election of the chair (conducted by the secretary). Following election the chair takes control of the meeting.

Conduct of the First Meeting

- 4.4 Once a quorum is present the secretary will open the meeting and announce the formation of a duly constituted committee with reference to the relevant Standing Order establishing the committee or to the resolution of appointment. The following wording may be used:

Members

Prior to holding an election for the position of the chair I have to make a formal announcement.

By (resolution or pursuant to standing orders) on (date) the Assembly appointed the (name) committee. On (date) the Assembly appointed the following as committee members:

[read list of Members].

- 4.5 After advising the committee members of any special provisions in the Standing Orders or resolution of appointment regarding the powers of the chair and how they shall be elected, the secretary asks:

Is there any proposal for the chair of the committee?

⁶⁹ Standing Order 189(3)

Is there a seconder for the proposal?

When a Member has been proposed and seconded the secretary then asks:

Is there any further proposal?

If there is no further proposal, the secretary says:

The time for proposals has expired.

- 4.6 If only one Member has been proposed as chair, the secretary declares the Member to be elected as chair and invites the Member to take the chair. If more than one Member is proposed as chair, the secretary shall conduct a ballot between the Members proposed.
- 4.7 After being appointed the chair takes control of the meeting and conducts the election for a deputy chair in a similar manner as that described above for the election of the chair with the chair having both a deliberative and a casting vote.⁷⁰ The chair will then work through the remainder of the agenda.

Meeting Procedures

- 4.8 Ideally, basic procedures for the conduct of a committee's proceedings should be established during the first meeting. Matters to be considered include the following:
- **Statements to the media:** It is common practice for a committee to authorise its chair to be the sole spokesperson for the committee and to make statements on its behalf where these statements relate to matters of fact, committee operations and non-controversial matters.
 - **Meeting times and papers:** Establishing a set time for meetings ensures that Members are able to schedule their commitments around the meetings. The committee may also determine how far in advance of a meeting Members would expect to receive the papers for the meeting.
 - **Publication of submissions and transcripts:** The committee may find it convenient to make decisions about the publication of submissions and transcripts under particular circumstances, for example, for all transcripts of public hearings to be published after witnesses have had three business days to make any corrections.
- 4.9 While visitors may attend public hearings, they are not permitted to attend deliberative meetings of the committee.⁷¹ A Member of the Assembly, even though they may not be a member of the committee, may participate in its meetings and question witnesses unless the committee orders otherwise. However, they are not allowed to vote and must withdraw when the committee is taking evidence in private or deliberating.⁷² Sessional Orders of the 13th Assembly

⁷⁰ Standing Order 186

⁷¹ Standing Order 193(1)

⁷² Standing Order 193(2))

allowed Members to attend private meetings, subject to any order by the committee.

- 4.10 The Standing Orders do not say anything about moving motions and voting in committees other than Standing Order 186(3) which provides that 'the Member chairing will have both a deliberative and a casting vote'.
- 4.11 As is the case in the Assembly, motions and amendments do not need to be seconded by another member (apart from nominations of a Member to be chair), and questions are determined on division by a majority of votes.
- 4.12 Following the practice of the House of Representatives' committees, and consistent with the practice of the Assembly, votes are not counted and recorded in the minutes unless more than one Member has called for a division, although a single dissenting Member may require that his or her dissent is recorded in the minutes.
- 4.13 While the formality of committee proceedings varies between committees, resolutions are necessary whenever the committee makes a formal decision on any matter; such as authorising publication of submissions, establishing a subcommittee, or adopting a report.

Quorum

- 4.14 A quorum is the number of members that must be present for a committee meeting to proceed. Standing Order 184(1) provides that:
- A quorum for a committee is three Members, unless the Assembly orders otherwise. If at any time a quorum is not present, the Member chairing will suspend the proceedings until a quorum is present, or will adjourn the committee.
- 4.15 Standing Order 184(2) also states that if a quorum is not achieved within 15 minutes from the time appointed for the meeting 'any Member present may depart after recording their name with the secretary, who shall convene a meeting for another time.'
- 4.16 If there is a quorum present at a meeting but there is no chair or deputy chair present, Standing Order 186(5) states that 'the Members present will elect another Member to act as chair at the meeting.'

Minutes

- 4.17 Standing Order 188 requires that:
- (1) The secretary records the proceedings of the committee or subcommittee in the Minutes of Proceedings. The minutes are then confirmed by the committee or subcommittee and signed by the Member chairing.
 - (2) Documents presented to the committee or subcommittee will be recorded in the Minutes of Proceedings.
- 4.18 The minutes of a committee meeting should record the following information:
- the time, date and place of the meetings.

- names of Members, witnesses and other visitors participating in the meeting, and any apologies.
- every motion, amendment or resolution moved by the committee and the name of the mover and any seconder.
- on any division, the names of Members voting on a question as well as an indication of the side of the question on which they voted.
- documents formally received and any action taken in relation to them.
- the date, time and place of the next meeting.

4.19 The chair signs minutes of a preceding meeting after they have been confirmed by the committee.

Committee Records

4.20 The minutes and transcripts of committee meetings, and all committee files, records and documents presented to it, are confidential and may not be disclosed or published to any person other than a member of the committee or a parliamentary officer assigned to the committee unless they have been:

- reported to the Assembly; or
- authorised for publication by the Assembly; the committee or the subcommittee.⁷³

Any breach of this confidentiality may be dealt with by the Assembly as a contempt.

4.21 The Assembly has authorised the release of committee evidence after five years under Standing Order 188(3):

- (3) The Speaker may permit any person to examine and take extracts from evidence submitted to, or documents and records of, committees of the former Legislative Council, and/or the Legislative Assembly, which are in the custody of the Legislative Assembly and which have been in its custody for at least 5 years: provided that such evidence was not taken in camera or that such documents and records are not of a confidential or restricted nature; and the speaker reports to the Assembly each disclosure of evidence and/or documents and records permitted taken and the name of the person or persons to whom disclosure has been made.

Witnesses

4.22 Standing Orders, particularly Standing Orders 210 and 232 and the *Legislative Assembly (Powers and Privileges) Act 1992* inform the procedures to be followed by committees when dealing with witnesses.

4.23 Witnesses usually provide evidence to Assembly inquiries voluntarily as an opportunity to have their opinions heard. Witnesses appearing voluntarily before

⁷³ Standing Order 194(2)

committees receive the protection of parliamentary privilege (as noted in Chapter 3 above) and must not deliberately or recklessly mislead the committee.

Summoning Witnesses and Requiring Documents

- 4.24 On occasion, a committee may be investigating a matter where it needs to hear from a witness who is reluctant to appear, or obtain documents that the owner does not wish to disclose. Committees and subcommittees have the power to 'invite or summon witnesses and to request or require documents to be produced as determined by the committee or subcommittee'.⁷⁴ A committee cannot summon a Member of the Assembly.⁷⁵ A person under summons cannot refuse to answer a question or produce a document without reasonable excuse.⁷⁶
- 4.25 Section 18(1) of the *Legislative Assembly (Powers and Privileges) Act 1992* says that a summons may be issued under the hand of the clerk attending the committee (First Clerk Assistant or committee secretary).⁷⁷
- 4.26 In some cases witnesses, while willing to appear before a committee, will request that a summons is issued. For instance, there have been times where witnesses have been concerned that answering questions might be against contractual confidentiality requirements. A summons made it clear they were being compelled to provide any such information.⁷⁸
- 4.27 Should a committee wish to call a Member, including Ministers, to give evidence, the provisions of Standing Order 205 apply:
- If a committee desires the attendance of a Member as a witness, the chair will, in writing, request them to attend; but should they refuse to attend, or to give evidence or information as a witness to the committee, the committee informs the Assembly therewith, and will not request the Member to attend the committee again.

Swearing

- 4.28 While witnesses are not generally examined on oath, committees are authorised to do so if it is considered necessary to ensure the truthfulness of their evidence.⁷⁹ If the committee decides that a witness is to take an oath, the administration, form and content of the oath must comply with the provisions of the *Oaths, Affidavits and Declarations Act 2010*.

Questioning

- 4.29 Standing Order 210(11) requires the chair to 'take care to ensure that all questions put to witnesses are relevant to the committee's inquiry'.⁸⁰ Furthermore,

⁷⁴ Standing Order 190

⁷⁵ *Legislative Assembly (Powers and Privileges) Act 1992*, s 18; see also Standing Order 202

⁷⁶ *Legislative Assembly (Powers and Privileges) Act 1992*, s 21

⁷⁷ *Legislative Assembly (Powers and Privileges) Act 1992*, s 18(1)

⁷⁸ D. R Elder (ed), *House of Representatives Practice (Seventh Edition)*, Department of the House of Representatives, Canberra ACT, 2018 p. 695

⁷⁹ *Legislative Assembly (Powers and Privileges) Act 1992*, s 19(1)

⁸⁰ Standing Order 210(11)

committees may not ask Northern Territory or Commonwealth Government officers for their opinions on matters of policy. They shall, however, be given reasonable opportunity to refer such questions to superior officers or to a Minister.⁸¹

- 4.30 Where a witness objects to answering a question on any ground, the committee will invite them to state their reasons. For example, at times government agencies may claim that the information required is commercial-in-confidence. It may also be the case that a public servant, on behalf of a Minister, may seek to decline to provide evidence on the grounds that its disclosure would not be in the public interest. However, claims of public interest immunity should be made by Ministers and not by public servants directly.⁸²
- 4.31 Unless the committee decides that the question should not be pressed, the committee shall consider in private session whether it will insist upon an answer to the question, keeping in mind 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 decides that it needs an answer to the question, the witness will be advised of that and the reasons for it. They then must answer the question in private, unless the committee decides that it is essential to the inquiry that the question be answered in public session.⁸³

Transcript of Evidence

- 4.32 Committee proceedings are recorded and a transcript is produced. All witnesses are provided with a transcript of their evidence and given an opportunity to check the transcript and notify the secretariat of any errors.⁸⁴ When transcripts have been checked by witnesses and authorised for publication they will be uploaded to the Assembly's website. While it is unusual for transcripts of *in camera* evidence to be published, witnesses are advised that the committee and the Assembly is authorised to do so if they see fit.⁸⁵
- 4.33 If a witness gives evidence that reflects adversely on a person and the committee is not satisfied that it is relevant to the inquiry, the committee must consider removing the evidence from the transcript and forbidding publication of that evidence. However, should the committee choose not to remove or forbid the publication of such evidence, then the committee must give the person referred to in the evidence a reasonable opportunity to have access to the evidence and respond to it by way of written submission and appearance before the committee.⁸⁶

⁸¹ Standing Order 210(18)

⁸² D. R Elder (ed), *House of Representatives Practice (Seventh Edition)*, Department of the House of Representatives, Canberra ACT, 2018 p. 711

⁸³ Standing Order 210(12)

⁸⁴ Standing Order 210 (19)

⁸⁵ Standing Order 210 (8)

⁸⁶ Standing Order 210 (15)

Appendix A: Procedures to be followed by Assembly Committees for the Protection of Witnesses

STANDING ORDER 210

Procedures to be followed by Assembly Committees for the Protection of Witnesses

Unless otherwise ordered the following procedures will be followed by Committees of the Assembly when dealing with witnesses and prospective witnesses:

- (1) a witness will be invited to attend a Committee meeting to give evidence: A witness will be summoned to appear (whether or not the witness was previously invited to appear) only where the Committee has made a decision that the circumstances warrant the issue of a summons.
- (2) where the Committee desires that a witness produce documents relevant to the Committee's inquiry, the witness will be invited to do so, and an order 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 such an order.
- (3) a witness will be given reasonable notice of a meeting at which the witness is to appear, and supplied with a copy of the Committee's terms of reference, a statement of the matters expected to be dealt with during the witness's appearance, and a copy of these procedures: where appropriate, a witness may be supplied with a transcript of relevant evidence already taken.
- (4) a witness will be given an opportunity to make a submission in writing before appearing to give oral evidence.
- (5) reasonable opportunity must be available for a witness to raise any matters of concern to the witness relating to the witness's submission or the evidence the witness is to give before the witness appears at a meeting.
- (6) a witness will have reasonable access to any documents that the witness has produced to the Committee.
- (7) a witness will be offered, before giving evidence, the opportunity to make application, before or during the hearing of the witness's evidence, for any or all of the witness's evidence to be heard in private session, and will be invited to give reasons for any such application. If the application is not granted, the witness will be notified of reasons for that decision.
- (8) the Committee may table in the Assembly or publish evidence given in private session after consideration of the circumstances and deliberating that the circumstances are so extraordinary as to warrant such disclosure. Before giving any evidence in private session, a witness will be informed that it is within the power of the Committee to authorise publication of such evidence and that the Assembly also has the power to order the production and publication of such evidence.

- (9) a Member, in a protest or dissent added to a report, may not disclose evidence taken in camera unless so authorised by the Committee.
- (10) should the Committee consider it essential that evidence given or information received in private session is published or that it is essential that such evidence or information be included in the Committee's report the Chairman or secretary of the Committee must make every effort to discuss the matter with the relevant witness in an effort to minimise any potential damage to the witness which may flow from that publication or usage.
- (11) the Chairman will take care to ensure that all questions put to witnesses are relevant to the Committee's inquiry and that the information sought by those questions is necessary for the purpose of that inquiry. Where a Member of the Committee requests discussion of a ruling of the Chairman on this matter, the Committee will deliberate in private session and determine whether any question which is the subject of the ruling is to be permitted.
- (12) where a witness objects to answering any question put to the witness on any ground, including the ground that the question is not relevant or that the answer may incriminate the witness, the witness will be invited to state the ground upon which objection to answering the question is taken. Unless the Committee determines immediately that the question should not be pressed, the Committee will then consider in private session whether it will insist upon an answer to the question, having regard to the relevance of the question to the Committee's inquiry and the importance to the inquiry of the information sought by the question: If the Committee determines that it requires an answer to the question, the witness will be informed of that determination and the reasons for the determination, and will be required to answer the question only in private session, unless the Committee determines that it is essential to the Committee's inquiry that the question be answered in public session; and where a witness declines to answer a question to which the Committee has required an answer, the Committee will report the facts to the Assembly.
- (13) where a Committee has reason to believe that evidence about to be given may reflect adversely on a person, the Committee will give consideration to hearing that evidence in private session.
- (14) where a witness gives evidence reflecting adversely on a person and the Committee is not satisfied that that evidence is relevant to the Committee's inquiry, the Committee will give consideration to expunging that evidence from the transcript of evidence, and to forbidding the publication of that evidence.
- (15) where evidence is given which reflects adversely on a person and action of the kind referred to in paragraph (14) is not taken in respect of the evidence, the Committee will provide reasonable opportunity for that person to have access to that evidence and to respond to that evidence by written submission and appearance before the Committee.
- (16) 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. In considering

such an application, the Committee will have regard to the need for the witness to be accompanied by counsel to ensure the proper protection of the witness. If an application is not granted, the witness will be notified of reasons for that decision.

- (17) a witness accompanied by counsel will be given reasonable opportunity to consult counsel during a meeting at which the witness appears.
- (18) an officer of a department of the Territory or of the Commonwealth may not be asked to give opinions on matters of policy and be given reasonable opportunity to refer questions asked of the officer to superior officers or to a Minister.
- (19) reasonable opportunity will be afforded to witnesses to make corrections of errors of transcription in the transcript of their evidence and to put before the Committee additional material supplementary to their evidence and
- (20) where the Committee has any reason to believe that any person has been improperly influenced in respect of evidence which may be given before the Committee, or has been subjected to or threatened with any penalty or injury in respect of any evidence given, the Committee will take all reasonable steps to ascertain the facts of the matter: Where the Committee considers that the facts disclose that a person may have been improperly influenced or subjected to or threatened with penalty or injury in respect of evidence which may be or has been given before the Committee, the Committee will report the facts and its conclusions to the Assembly.

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