

Written evidence submitted by Australia House of Representatives

1. What powers do committees (investigative/select) in your Parliament have to summon witnesses and call for the production of documents? Are these powers set out in legislation or in standing orders?
2. Are there any recent examples from your Parliament of contempts relating to investigative committees, including non-compliance of witnesses summoned to appear before a Committee?
3. What sanctions are available to your Parliament in cases of non-compliance or other contempts on the part of witnesses?
4. What rules and guidelines do you have to ensure witnesses and potential witnesses before select committees are treated with fairness and due respect?
5. What is your assessment of the effectiveness of your Parliament's powers and sanctions to deal with contempts?

Powers of investigative committees to require the attendance of witnesses and the production of documents

Under the Standing Orders of the Australian House of Representatives, committees have the power to call for witnesses to attend and for documents to be produced.¹ These powers are also set out in the various resolutions and Acts appointing joint committees of the House of Representatives and Senate.

In 2013, the House has also adopted a resolution detailing procedures for dealing with witnesses.² In accordance with this resolution, which has continuing effect and has the same status as Standing Orders, witnesses are first invited to attend and give evidence.³ If a witness declines such an invitation, and if the committee has decided that the circumstances warrant it, a

¹ House of Representatives, [Standing Orders](#), standing order 236.

² House of Representatives, [Resolutions of the House](#), Procedures for dealing with witnesses.

³ House of Representatives, [Resolutions of the House](#), Procedures for dealing with witnesses, clause (1).

committee may order the witness to attend the committee by summons issued by the committee secretary.⁴

There are some limitations on the power of House of Representatives committees to call for witnesses to attend and for documents to be produced. Members of the House of Representatives can be invited by a committee to attend, and if the Member refuses to attend or to give evidence, the committee cannot summons the Member but must advise the House.⁵ These procedures have never been used in the House of Representatives.⁶ Members of the House may volunteer to appear as witnesses before House committees. Similarly, Senators cannot be compelled to attend a House committee, but have appeared voluntarily.⁷ In relation to documents, it is considered that committees do not have the power to order a general search for documents, and that a committee would need to provide a certain level of precision in its request.⁸

There also exist certain limitations in relation to evidence that is sought from various classes of witness, such as public officials and parliamentarians from Australia's states and territories, federal public officials, and parliamentary staff.⁹

Examples of contempts relating to committees, including non-compliance of witnesses

Contemporary practice is for witnesses to be invited to appear before the committee. Committees rarely use their powers to compel attendance, and instead rely on voluntary assistance and co-operation.

Committees occasionally have issues with witnesses who are reluctant to appear, but these circumstances are usually dealt with informally. Where witnesses refuse an initial invitation, they usually reverse this decision when they are reminded of the powers of parliamentary committees. *House of Representatives Practice* states:

On relatively rare occasions, committees intent upon obtaining evidence from particular individuals or organisations reluctant to provide it have drawn attention to their powers to compel the giving of evidence and to the possibility that failure to comply with their orders might be dealt with as a contempt of the House. This approach has usually avoided the necessity of resorting to the issue of a summons.¹⁰

House of Representatives Practice discusses two cases where a witness failed to appear in response to a summons. The first relates to a summons issued by the Joint Standing Committee on Electoral Matters, and the second to a summons issued by the Joint Standing Committee on

⁴ [House of Representatives Practice](#), Seventh edition, p. 694.

⁵ House of Representatives, [Standing Orders](#), standing order 249(b); [House of Representatives Practice](#), Seventh edition, p. 702.

⁶ [House of Representatives Practice](#), Seventh edition, p. 703.

⁷ [House of Representatives Practice](#), Seventh edition, p. 703.

⁸ [House of Representatives Practice](#), Seventh edition, p. 687.

⁹ [House of Representatives Practice](#), Seventh edition, pp. 700, 701, 705.

¹⁰ [House of Representatives Practice](#), Seventh edition, p. 695.

the National Capital and External Territories.¹¹ In each case, the matter was resolved and the witness appeared before the committee, without the witness being reported to the House for a possible contempt.

House of Representatives Practice also refers to a case where the Standing Committee on Infrastructure and Communications conducted an inquiry into IT pricing, and used its power to compel the attendance of witnesses from three large technology companies.¹² These companies repeatedly declined to attend hearings despite the committee extending several written invitations. In updating the House on the progress of the inquiry, the Chair of the committee stated that:

It is not good enough for the industry to simply stonewall the inquiry—or for that matter, to ignore interested consumers who have a legitimate public interest in IT pricing. It would be far better for companies to defend their business model and their pricing structure in public before the committee. The committee has offered these companies more than once the chance to appear. We would give them a fair hearing; they have my public commitment on it. The companies' failure to appear leaves the committee with an unenviable choice between compelling the attendance of individuals to give evidence and reporting without hearing in detail from industry.¹³

The committee subsequently issued summonses and issued a media release stating that this had occurred.¹⁴ The three companies appeared at the committee's public hearing one month later. This case demonstrates that, while there are sanctions for non-compliance with a summons, possibly a greater and more pragmatic penalty for an organisation or prominent individual is the public embarrassment attached to refusing to comply with a summons from a parliamentary committee.

Sanctions available to committees

Section 7 of the [Parliamentary Privileges Act 1987](#) sets out the penalties that may be imposed by a House of Parliament for an offence against that House. These include imprisonment for a period not exceeding 6 months, or imposition of a fine (up to \$5,000 for a natural person or up to \$25,000 for a corporation). In practice, the House of Representatives has never exercised these powers under the Act, including in relation to non-compliance or other contempts on the part of witnesses. The House has only once imposed a penalty of imprisonment (for three months, in 1955), but this was before the establishment of the Act and predated the contemporary framework for defining and dealing with contempts of the Parliament.¹⁵

The House of Representatives has other sanctions available to it, such as public reprimand or admonishment or the requirement for an apology. The House has issued reprimands on several

¹¹ [House of Representatives Practice](#), Seventh edition, p. 695.

¹² [House of Representatives Practice](#), Seventh edition, p. 695.

¹³ [House of Representatives Hansard](#), 29 October 2012, p. [12170](#).

¹⁴ House of Representatives Standing Committee on Infrastructure and Communications, *Committee to Summons Tech Companies*, Media Release, 11 February 2013.

¹⁵ [House of Representatives Practice](#), Seventh edition, pp. 765, 766.

occasions, and has required apologies to be publicly made, however these were not in response to contempts by witnesses.¹⁶

While a committee has the power to call for witnesses and documents, the House alone has the power to punish contempts. The committee's role is to report the breach to the House so that the House can deal with the possible contempt.¹⁷ A committee's report to the House usually takes the form of a statement by the committee chair, once the committee has formed some preliminary view on the matter.¹⁸ In order to inform itself on a matter, a committee would usually take steps such as writing to the person or organisation involved. This can often resolve the matter, or assist the committee to make an informed decision about whether to proceed with a complaint to the House.¹⁹

The House of Representatives Standing Committee of Privileges and Members' Interests is responsible for inquiring into and reporting on complaints of breach of privilege or contempt which may be referred to it by the House or by the Speaker, or any related matter referred to it by the House. A report to the House by the Committee of Privileges and Members' Interests may make findings as to whether or not a breach of privilege or contempt has been committed, and may make recommendations on what action should be taken. The House is not bound to follow the committee's recommendations, and any motion moved in relation to the matter is subject to amendment.

In 2009, the House of Representatives adopted the following resolutions which seek to ensure that principles of natural justice and procedural fairness are observed by the House and its Committee of Privileges and Members' Interests when dealing with possible breaches of privilege or matters of contempt:

- Procedures for the protection of witnesses before the Committee of Privileges and Members' Interests;²⁰
- Procedures of the House of Representatives for dealing with matters of contempt.²¹

Protections for witnesses

The resolution of the House of Representatives adopted in 2013, as referred above, sets out procedures for committees in dealing with witnesses, providing witnesses with protections and a measure of certainty of process.²² The resolution states that 'witnesses shall be treated with respect and dignity at all times.' The resolution also covers matters such as:

¹⁶ [House of Representatives Practice](#), Seventh edition, pp. 766, 767.

¹⁷ [House of Representatives Practice](#), Seventh edition, p. 716.

¹⁸ [House of Representatives Practice](#), Seventh edition, p. 716.

¹⁹ [House of Representatives Practice](#), Seventh edition, p. 716.

²⁰ House of Representatives, [Resolutions of the House](#), Procedures for the protection of witnesses before the Committee of Privileges and Members' Interests.

²¹ House of Representatives, [Resolutions of the House](#), Procedures of the House of Representatives for dealing with matters of contempt.

²² House of Representatives, [Resolutions of the House](#), Procedures for dealing with witnesses.

- ensuring witnesses are invited to give evidence or produce documents prior to any decision by the committee to issue a summons;
- providing witnesses with adequate notice of meetings and sufficient information about the nature and scope of the committee's inquiry;
- allowing witnesses the opportunity to request that their evidence be heard in camera;
- informing witnesses of how their evidence might be used or published by the committee;
- ensuring that questions put to witnesses are relevant and necessary for the committee's work;
- the process to be followed if a witness objects to answering a question;
- arrangements for witnesses wishing to be accompanied by counsel or an adviser;
- restrictions on the types of questions able to be asked of public officials;
- opportunities for witnesses to correct transcripts or add to their evidence; and
- the process to be followed by a committee if it suspects a witness has been improperly influenced, or has been threatened or penalised as a result of giving evidence.

Effectiveness of the framework for dealing with witnesses and matters of contempt

While sanctions may not frequently be imposed, the Standing Orders, resolutions adopted by the House, the *Parliamentary Privileges Act 1987*, the work of the Committee of Privileges and Members' Interests, and years of accumulated practice, together provide a coherent framework for identifying, considering, and responding to contempts, and potential contempts, of the House. The *Parliamentary Privileges Act 1987* in particular, provides significant clarification of the law and practice relating to parliamentary privilege, with key aspects being the threshold test for contempt in section 4, and the protection of freedom of speech for 'proceedings in parliament' that is given definition in section 16.

In relation to committee proceedings specifically, the House of Representatives' powers and sanctions as they pertain to contempts committed by witnesses have not been fully tested. One reason for this is that most witnesses do not need to be compelled to provide evidence, and usually welcome the opportunity to engage with parliamentary committee inquiries. Another reason may be that, throughout various evidence gathering processes, witnesses are regularly reminded of their rights and responsibilities, with accompanying explanations of the powers of the House to deal with possible contempts of Parliament. Furthermore, while committees are aware of their considerable powers, they generally exercise caution and discretion in exercising these powers. It is considered that the ability of the House to exercise its rights should be carefully weighed against the need to engage constructively with individuals and organisations.

If the House of Commons Committee of Privileges would like me to expand on these points or respond to any questions, I would be happy to provide further information.

Yours sincerely



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