

## *Parliamentary committees*

The principal purpose of parliamentary committees is to conduct inquiries, performing functions which the Houses themselves are not well fitted to perform. They find out the facts of a case or issue, examine witnesses, sift evidence, and draw up reasoned conclusions. Because of their composition and method of procedure, which is structured but relatively informal compared with that of the Houses, committees are well suited to the gathering of evidence from expert groups or individuals. In a sense they ‘take Parliament to the people’ and allow direct contact between members of the public and representative groups of Members of the House. Not only do committee inquiries enable Members to be better informed about community views but, by simply undertaking an inquiry, committees may promote public debate on the subject at issue. The all-party composition of most committees and their propensity to operate across party lines are important features. This bipartisan approach generally manifests itself throughout the conduct of inquiries and the drawing up of conclusions. Committees oversee and scrutinise the Executive and are able to contribute towards better government. They also assist in ensuring a more informed administration and policy-making process, in working with the Executive on proposed legislation and other government initiatives. In respect of their formal proceedings committees are microcosms and extensions of the Houses themselves, limited in their power of inquiry by the extent of the authority delegated to them and governed for the most part in their proceedings by procedures and practice which reflect those which prevail in the House by which they were appointed.<sup>1</sup>

### **AUTHORITY FOR THE APPOINTMENT OF COMMITTEES**

The power of the House to appoint committees is not in doubt but the source of this power, particularly in regard to investigatory committees, cannot be stated precisely. The following three sources have been suggested:

- section 49 of the Constitution on the basis that the power to appoint committees of inquiry was one of the ‘powers’ or ‘privileges’ of the United Kingdom House of Commons as at 1901 within the meaning of that section;
- section 50 of the Constitution on the basis that to provide by standing orders for the setting up of committees of inquiry is to regulate the conduct of the business and proceedings of the House; and
- that by virtue of the common law, the establishment of a legislative chamber carried with it, by implication, powers which are necessary to the proper exercise of the functions given to it.

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<sup>1</sup> However, joint committees operate under Senate procedures when the procedures of the two Houses differ, *see* p. 648. Any instruction to a joint committee can only be effected by resolution agreed to by both Houses. This should be remembered when reference is made in this chapter to resolutions affecting committees and to the responsibility of committees to report. Unless otherwise indicated it can be assumed that in any instance in which the House would be involved in the case of House committees, both Houses would be involved in the case of joint committees. Further, where the Speaker may be required to be involved, the President may also be involved where joint committees are concerned. For a list of committees since 1901 *see* Appendix 24.

As there is no doubt about the power of the House of Commons to appoint committees,<sup>2</sup> section 49 of the Constitution appears to be a clear source of power, with extensive ambit, for the Houses of the Parliament to appoint committees of inquiry. The other sources ‘could be called in aid to extend its breadth or to sustain what otherwise might be uncertain about it’.<sup>3</sup>

## TYPES OF COMMITTEES AND TERMINOLOGY

### Parliamentary committees

Committees appointed by the House, or by both Houses, can be categorised as follows (a particular committee may fall into more than one category):

**Standing committees** are committees created for the life of a Parliament and are usually re-established in successive Parliaments. They have a continuing role.

**General purpose standing committees** are a specific type of standing committee. They are investigatory or scrutiny committees, established by the House at the commencement of each Parliament to inquire into and report upon any matters referred to them, including legislation. These committees specialise by subject area, between them covering most areas of federal government activity (*see* page 643).

**Select committees** are created as the need arises, for a specific purpose, and thus have a more limited life which is normally specified in the resolution of appointment. Once a select committee has carried out its investigation and presented its final report, it ceases to exist.

**Joint committees** draw their membership from, and report to, both Houses of Parliament, enabling Members and Senators to work together (*see* page 648). Joint committees may be standing or select, and may be statutory committees.

**Statutory committees** are those established by Act of Parliament, that is, by statute. All existing statutory committees are joint committees (*see* page 650).

**Domestic or internal committees** are those whose functions are concerned with the powers and procedures of the House or the administration of Parliament (*see* page 644).

**The Federation Chamber** (until 2012 named the Main Committee) is a committee of the House established to be an alternative venue to the Chamber for debate of a restricted range of business. It is not an investigatory committee and does not hear witnesses or take evidence. (*See* Chapter on ‘The Federation Chamber’ for more detail)

### *Different definitions of standing and select committees*

In contrast to the Australian usage, until recently in the United Kingdom the distinguishing feature of a *standing committee* was that it proceeded by debate, as opposed to a *select committee*, which proceeded by taking evidence, deliberation and report.<sup>4</sup> Since 2006 the former House of Commons standing committees have been known as general committees.<sup>5</sup> These committees (public bills committees and other general committees) ‘proceed in the same way as the House by debating and deciding

2 The term ‘committee’ originally signified an individual (i.e. to whom a bill had been committed). Lord Campion, *An introduction to the procedure of the House of Commons*, 3rd edn, Macmillan, London, 1958, p. 26.

3 *Parliamentary committees: powers over and protection afforded to witnesses*, Paper prepared by I. J. Greenwood and R. J. Ellicott, PP 168 (1972) 3.

4 *May*, 23rd edn, p. 794.

5 For history of the use of the term ‘standing committee’ in the House of Commons, and recommendation that it be discontinued, *see* Select Committee on Modernisation of the House of Commons, *First report: The legislative process*, HC 1097 (2005–06), paras 63–6.

upon questions'.<sup>6</sup> The House of Representatives does not have committees which 'proceed by debate' (other than the Federation Chamber), but has used them in the past for the detail stages of legislation—that is, legislation committees and estimates committees between 1978 and 1981 (*see* first edition).

### Unofficial committees

In addition to the parliamentary committees described above there are further categories of committees consisting of Members and Senators which operate within the Parliament. However, although their members are Members of Parliament, these committees are not appointed by either House. They are therefore not committees of the Parliament, and do not enjoy the special powers and privileges of such committees, nor do they necessarily operate in accordance with parliamentary procedures and practice.

In the early years after Federation unofficial committees consisting of Members and Senators were appointed by the Government of the day. Membership included members of the Opposition. The committees' reports were submitted to the Government and subsequently presented to one or both Houses. The practice of appointing such committees was not continued with the establishment by the House of formal committees and a formal committee structure.

Informal committees consisting of Members and Senators have been established to advise the Presiding Officers in respect of accommodation matters in the provisional Parliament House and, in more recent years, in respect of the information systems needs of Members and Senators and in respect of the Parliamentary Education Office. In the 36th and 37th Parliaments a group of Members and Senators, including the Presiding Officers, formed a working group to consider issues relating to standards of conduct for Members of Parliament, including Ministers (*see* Chapter on 'Members').

The chairs and deputy chairs of the investigatory committees supported by the Department of the House of Representatives meet together as an informal Liaison Committee of Committee Chairs and Deputy Chairs to discuss matters of mutual concern and advise the Speaker on matters affecting committees. The Deputy Speaker chairs the group.

The government and opposition parties each have committees of private Members to assist them in the consideration of legislative proposals and other issues of political significance allied to each committee's function. These party committees are referred to in the Chapter on 'House, Government and Opposition'.

## HOUSE STANDING COMMITTEES

### General purpose standing committees

In 1987 the House established a comprehensive committee system by setting up eight general purpose standing committees. At the same time, the functions of the Joint Committee on Foreign Affairs and Defence were extended, thus giving the House the capacity to monitor or to 'shadow' the work of all federal government departments and instrumentalities.

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<sup>6</sup> *May*, 24th edn, p. 859.

The committees are appointed at the beginning of each Parliament pursuant to standing order 215. The numbers,<sup>7</sup> names and subject areas of the committees have varied. In the 45th Parliament the following were appointed:

- Standing Committee on Agriculture and Water Resources;
- Standing Committee on Communications and the Arts;
- Standing Committee on Economics;
- Standing Committee on Employment, Education and Training;
- Standing Committee on the Environment and Energy;
- Standing Committee on Health, Aged Care and Sport;
- Standing Committee on Indigenous Affairs;
- Standing Committee on Industry, Innovation, Science and Resources
- Standing Committee on Infrastructure, Transport and Cities;
- Standing Committee on Social Policy and Legal Affairs; and
- Standing Committee on Tax and Revenue.

The general purpose standing committees are so called because they are established (or stand) for the duration of the Parliament and have the power to inquire into and report on any matter referred to them by the House or a Minister. Matters referred may include any pre-legislation proposal, bill, motion, petition, vote or expenditure, other financial matter, report or document.

In addition, annual reports of government departments and authorities and reports of the Auditor-General presented to the House are automatically referred to the committees for any inquiry they may wish to make.<sup>8</sup> Reports are referred to particular committees in accordance with a schedule presented by the Speaker recording the areas of responsibilities of each committee. The Speaker is empowered to determine any question should responsibility be unclear or disputed in respect of a report or a part of a report. The period during which an inquiry concerning an annual report can be commenced ends on the day on which the next annual report of the department or authority is presented to the House.<sup>9</sup>

### Committees concerned with the operations of the House

The standing orders provide for the appointment of the following committees at the beginning of each Parliament:

#### *Committee of Privileges and Members' Interests (S.O. 216)*

The formerly separate Committee of Privileges and Committee of Members' Interests were amalgamated in 2008.

The Committee of Privileges and Members' Interests is appointed to inquire into and report on complaints of breach of privilege or contempt or on any other matters which may be referred to it. The committee has no power to initiate inquiries. The House has referred to the committee matters of a general nature, such as the use of House records in the courts, the issue of public interest immunity, and the legal status of the records and

7 Nine from 1996; thirteen from 2002; twelve from 2008; nine from 2010 following a Procedure Committee recommendation to reduce the number of committees—see Standing Committee on Procedure, *Building a modern committee system: an inquiry into the effectiveness of the House committee system*, PP 144 (2010) 80–85; ten from 2015; eleven from 2016.

8 The Joint Committee of Public Accounts and Audit must be notified in writing of any inquiry into an Auditor-General's report—S.O. 215(c)(iv).

9 S.O. 215(c).

correspondence of Members.<sup>10</sup> The committee also considers applications from citizens for the publication of responses to statements in the House referring to them.

The procedure for raising and dealing with questions of privilege and details of the functions and procedures of the committee are discussed in detail in the Chapter on ‘Parliamentary privilege’.

The other function of the committee concerns the arrangements for the compilation, maintenance and accessibility of a Register of Members’ Interests, and various related matters. In 2017 the committee was given responsibility for a Members’ Citizenship Register. These functions are discussed in more detail in the Chapter on ‘Members’.

### *House Committee (S.O. 218)*

The House Committee is concerned with the provision of services and amenities to Members in Parliament House. The Speaker is a member of the committee. This committee has an advisory role only—executive responsibility rests with the Speaker and the President, who have not been bound by the decisions of their respective committees.

The House Committee usually deliberates by conferring with the similar committee of the Senate. When the two House committees are sitting together as the Joint House Committee, they should, generally speaking, only consider those matters which affect joint services, as each House is responsible for its own affairs. Recommendations affecting only one House should properly be made by the appropriate House Committee independently. In 1956 and in 1959 the House of Representatives House Committee considered and reported informally on Members’ accommodation. Reports are seldom made to the House.<sup>11</sup>

### *Publications Committee (S.O. 219)*

The Publications Committee of each House when conferring together form the Joint Committee on Publications which has the dual role:

- to recommend to the Houses from time to time as to which documents presented, that have not been ordered to be made a Parliamentary Paper by either House, ought to be made a Parliamentary Paper;<sup>12</sup> and
- to inquire into and report on the publication and distribution of parliamentary and government publications, and on matters referred to it by a Minister.

The committee is discussed in more detail in the Chapter on ‘Documents’.

### *Petitions Committee (S.O. 220)*

The Standing Committee on Petitions is appointed to receive and process petitions and to inquire into and report to the House on any matter relating to petitions and the petitions system. The committee’s functions are discussed in more detail under ‘Petitions’ in the Chapter on ‘Documents’.

### *Procedure Committee (S.O. 221)*

The Standing Committee on Procedure is appointed to inquire into and report on the practices and procedures of the House and its committees. As a result of reports of the

10 VP 1978–80/975 (11.9.1979); VP 1993–96/1107 (27.6.1994); VP 1998–2001/483 (31.3.1999).

11 *But see* report by Joint House Committee on accommodation for Members of Parliament at Canberra, VP 1926–28/181 (16.6.1926); *see also* reports by the Senate House Committee concerning Senators’ dress in the Senate Chamber, PP 235 (1971), and provision of staff and other facilities for Members of Parliament, PP 34 (1972), and the Joint House Department.

12 Senate standing orders (and former House standing orders) use the term ‘ordered to be printed’ instead of ‘ordered to be made a Parliamentary Paper’—the two terms may be treated as synonymous.

Procedure Committee a number of initiatives have been taken relating to the business of the House, including significant developments relating to private Members' business and procedures for the consideration of legislation, including the establishment of the Main Committee (renamed Federation Chamber in 2012). In 1998 the committee undertook a review of the House of Representatives committee system, resulting in extensive changes to the standing orders relating to committees.<sup>13</sup> In the 40th Parliament the committee undertook a complete review of House standing orders with a view to making them more logical, intelligible and readable. The committee's recommendations for revised standing orders were adopted by the House with effect from the first day of the 41st Parliament.<sup>14</sup>

### *Selection Committee (S.O. 222)*

The Selection Committee arranges the timetable and order of committee and delegation and private Members' business on Mondays; selects private Members' and committee and delegation business for referral to the Federation Chamber or return to the House, and selects bills for referral to committees.<sup>15</sup> The committee's functions are discussed in detail in the Chapter on 'Non-government business'.

### *House Appropriations and Administration Committee (S.O. 222A)*

The committee considers estimates of the funding required for the Department of the House of Representatives and reports to the Speaker or the House on matters referred to it. It also considers proposals for works in the parliamentary precincts that are subject to parliamentary approval. The committee's functions are discussed in detail in the Chapter on 'The Speaker, Deputy Speaker and officers'.

## HOUSE SELECT COMMITTEES

Select committees are appointed, as the need arises, by a resolution of the House.<sup>16</sup> Select committees, in Australian practice, have a limited life which should be defined in the resolution of appointment. The creation of a select committee is seen as a measure to meet a particular and perhaps short-term need. After the establishment of the general purpose standing committees in 1987 the House has not established select committees on a regular basis. Since then there have been only four House select committees—Print Media (1991), Televising of the House of Representatives (1991), Recent Australian Bushfires (2003), and Regional Development and Decentralisation (2017).

The House appoints select committees by motion, and must set a day for the reporting of the proceedings of a committee to the House. A member of the committee must present a report of the committee on or before the set day, unless the House grants an extension of time.<sup>17</sup> However, practice has not always accorded with this provision as select committees have been appointed with the provision to report 'as soon as possible'.<sup>18</sup> This occurs when a committee undertakes an inquiry which can be seen to be longer-term, perhaps even extending over the life of more than one Parliament. When a select committee is directed to report by a specific date or as soon as possible, its corporate existence comes to an end as soon as it does so.

13 Standing Committee on Procedure, *10 years on: A review of the House of Representatives committee system*, May 1998.

14 Standing Committee on Procedure, *Revised standing orders*, November 2003.

15 S.O. 222.

16 S.O. 223.

17 S.O. 223.

18 E.g. Select Committees on Pharmaceutical Benefits, VP 1970–72/304 (16.9.1970); Road Safety, VP 1970–72/1030 (27.4.1972); and on Tourism, VP 1976–77/510 (1.12.1976).

The standing orders also give committees leave to report from time to time.<sup>19</sup> This authorisation means that a committee is at liberty to make progress reports during the course of the consideration of the matter referred to it.<sup>20</sup> The following provision, or a similar one, has been included in the resolution of appointment of some select committees:

That the committee have leave to report from time to time but that it present its final report no later than [date].<sup>21</sup>

On presenting its final report the committee ceases to exist.

If a select committee finds it difficult or impossible to present a satisfactory final report by the specified date, it may be given an extension of time by the House, prior to, or on, the specified reporting date, by amendment of its resolution of appointment.<sup>22</sup>

The terms of reference of select committees tend to be narrow and specific and have traditionally been based on the assumption of a single inquiry and report. Nevertheless, the resolutions of appointment of some select committees have given the relevant Minister power to refer additional matters to them—that is, before they report and cease to exist.<sup>23</sup> A select committee with an unqualified power to report from time to time could elect to present a series of reports on particular aspects of its terms of reference.

## CONFERRAL WITH COMMITTEES OF THE SENATE

All committees of the House are now empowered to confer with a similar committee of the Senate.<sup>24</sup> In earlier times this authorisation was granted to individual committees on a case by case basis, with the general rule being that committees had no power to confer with committees of the Senate without leave of the House.<sup>25</sup> Senate standing orders still contain similar provisions. These provide that a committee of the Senate may not confer or sit with a committee of the House except by order of the Senate; that committees permitted or directed to confer with House committees may confer by writing or orally and that proceedings of a conference or joint sitting with a House committee must be reported to the Senate by its committee.<sup>26</sup>

The House and Publications Committees rely on their power to confer with their Senate counterparts to operate in practice as joint committees.<sup>27</sup> Other committees of the House do not sit as joint committees with their Senate counterparts, although this has happened in the past in special circumstances following authorising resolutions from both Houses.

A procedure was followed in the early years of the Parliament in respect of some committees which were established by resolution by each House independently but which in the conduct of inquiries became in effect joint committees. For example, the House, having appointed a Select Committee in relation to Procedure in Cases of

<sup>19</sup> S.O. 243.

<sup>20</sup> The Select Committees on Aboriginal Education and Aircraft Noise had power to report from time to time, VP 1985–87/59–60 (27.2.1985).

<sup>21</sup> Select Committee on Recent Australian Bushfires, VP 2002–04/833 (26.3.2003).

<sup>22</sup> Select Committee on Specific Learning Difficulties, VP 1976–77/273 (19.8.1976); Joint Select Committee on an Australia Card, VP 1985–87/764 (14.3.1986), 886 (29.4.1986); Joint Select Committee on Certain Family Law Issues, VP 1993–96/2058 (11.5.1995).

<sup>23</sup> Joint Select Committees on Aboriginal Land Rights in the Northern Territory (VP 1977/12 (10.3.1977) and on the Family Law Act (VP 1978–80/354–5 (17.8.1978)).

<sup>24</sup> S.O. 238.

<sup>25</sup> Former S.O. 350.

<sup>26</sup> Senate S.O. 40.

<sup>27</sup> Senate standing orders 21 and 22 provide for these committees to confer *and sit as a joint committee* with a similar committee of the House of Representatives.

Privilege, sent a message to the Senate ‘requesting it to appoint a similar Committee empowered to act conjointly with the Committee of this House’ to which the Senate agreed; the joint select committee reported as a single entity.<sup>28</sup>

In 1994 the House authorised the Standing Committee on Legal and Constitutional Affairs to meet concurrently with its Senate counterpart for the purposes of examining and taking evidence in connection with inquiries being held by each committee into aspects of section 53 of the Constitution. The resolution provided for meetings to be jointly chaired and for the procedures of the Senate as set out in its privilege resolution 1 of February 1988 to be followed to the extent that they were applicable.<sup>29</sup> The Senate, by resolution, noted that its standing committee had power to confer with its counterpart, and directed its committee to confer accordingly.<sup>30</sup> In the event no formal meetings were held between the two committees, although two informal meetings took place between their members.<sup>31</sup>

When a Joint Committee on the Australian Capital Territory was not appointed in the 35th Parliament, agreement was reached between the Senate and House for a joint process for the consideration of proposals to modify or vary the plan of layout of the city of Canberra and its environs, a function previously carried out by the former joint committee. The Senate<sup>32</sup> and the House<sup>33</sup> resolved to refer such proposed variations to their respective Standing Committees on Infrastructure (later renamed Transport, Communications and Infrastructure), and empowered their committees to consider and make use of the evidence and records of the Joint Committees on the Australian Capital Territory appointed during previous Parliaments. The House resolution provided for its committee to inquire into and report on such proposals when conferring with a similar committee of the Senate. The Senate concurred with the House resolution, empowered its committee to sit with the House committee as a joint committee for that purpose, and also resolved to add particular provisions which were accepted by the House.<sup>34</sup>

## JOINT COMMITTEES

As described in further detail below, joint committees are established by resolution or legislation agreed to by both Houses, and membership consists of both Members and Senators. It is essential to an understanding of joint committees to recognise that they are the creatures of both Houses. Neither House may give instructions to a joint committee independently of the other unless both Houses expressly agree to the contrary. However, it is often provided in resolutions appointing joint committees that either House may refer matters for investigation by those committees.<sup>35</sup>

The standing orders of both Houses are largely silent on the procedures to be followed by joint committees. It has become the established practice for such committees to follow Senate committee procedures when such procedures differ from those of the House,<sup>36</sup> subject to any particular variations, necessitated for example by the provisions

28 VP 1907–08/299 (1.4.1908), 302 (2.4.1908), 505 (29.5.1908), 515–6 (4.6.1908); *see also* VP 1907–08/370 (2.4.1908) for order of the House giving extended power to its members on the committee.

29 VP 1993–96/1165 (30.6.1994).

30 J 1993–96/1677 (12.5.1994). Note that the Senate standing orders on this matter changed in 1994.

31 PP 307 (1995).

32 VP 1987–90/155 (27.10.1987).

33 VP 1987–90/181 (2.11.1987).

34 For details *see* VP 1987–90/203–4 (4.11.1987), 212 (5.11.1987).

35 E.g. VP 1993–96/80, 82 (13.5.1993); VP 1998–2001/164, 166 (3.12.1998); VP 2008–10/31–4 (12.2.2008).

36 This practice is based on that of the United Kingdom whereby joint committees follow House of Lords select committee procedures, unless otherwise agreed, *May*, 24th edn, p. 914.



of the resolutions appointing them and any further instructions agreed to by both Houses. However, chairs of joint committees, when seeking procedural advice, may approach the Presiding Officers or the Clerks of either or both Houses.

### Joint committees appointed by resolution

Joint committees appointed by resolution may be described as ‘joint standing committees’ or ‘joint select committees’. Like select committees of the House the latter are seen to have an ad hoc role and generally cease to exist upon reporting, while the former have a longer-term role and members hold office for the life of a Parliament. Some committees have simply been called ‘joint committees’ (for example, the former Joint Committee on the Australian Capital Territory) but could equally have been called joint standing committees.

The number and names of joint standing committees appointed by resolution varies from Parliament to Parliament. The following joint standing committees were appointed by resolution at the start of the 45th Parliament in 2016:

- Joint Standing Committee on Electoral Matters;
- Joint Standing Committee on Foreign Affairs, Defence and Trade;
- Joint Standing Committee on Migration;
- Joint Standing Committee on the National Capital and External Territories;
- Joint Standing Committee on the National Broadband Network;
- Joint Standing Committee on the National Disability Insurance Scheme;
- Joint Standing Committee on Northern Australia;
- Joint Standing Committee on the Parliamentary Library (*see below*);
- Joint Standing Committee on Trade and Investment Growth;
- Joint Standing Committee on Treaties.

Joint select committees may also be appointed for a specific purpose by resolutions of both Houses—for example, the Joint Select Committee on the Australia Fund Establishment and the Joint Select Committee on Trade and Investment Growth (2014); the Joint Select Committee on Government Procurement (2016); the Joint Select Committee on Oversight of the Implementation of Redress Related Recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (2017); and the Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples (2018). The functions, membership, powers and procedures of these committees are determined by the resolutions establishing them.

### *Joint Standing Committee on the Parliamentary Library*

The committee was first established by resolution of both Houses in December 2005. The terms of reference of the committee are to:

- consider and report to the President of the Senate and the Speaker of the House of Representatives on any matters relating to the Parliamentary Library referred to it by the President or the Speaker;
- provide advice to the President and the Speaker on matters relating to the Parliamentary Library;
- provide advice to the President and the Speaker on an annual resource agreement between the Parliamentary Librarian and the Secretary of the Department of Parliamentary Services; and

- receive advice and reports, including an annual report, directly from the Parliamentary Librarian on matters relating to the Parliamentary Library.<sup>37</sup>

### Joint statutory committees

The joint statutory committees are established by Acts of Parliament at the commencement of each Parliament. In some cases the establishing Acts leave the detail of the membership, powers and procedures of the committees to the Parliament to determine. This is done by resolution of each House at the start of every Parliament.

#### *Joint Committee of Public Accounts and Audit*

The Joint Committee of Public Accounts and Audit<sup>38</sup> is established by the *Public Accounts and Audit Committee Act 1951*. The functions of the committee are set out in sections 8 and 8A of the Act. In general terms they are to:

- examine the financial affairs of authorities of the Commonwealth to which the Act applies;
- review all reports of the Auditor-General that are presented to each House of the Parliament;
- consider the operations and resources of the Australian National Audit Office;
- approve or reject the recommendation for appointment of the Auditor-General or Independent Auditor;
- determine the annual audit priorities of the Parliament and advise the Auditor-General of those priorities; and
- increase parliamentary and public awareness of the financial and related operations of government.

The committee also has functions pursuant to the Parliamentary Service Act in relation to the Parliamentary Budget Office, including in relation to the appointment of the Parliamentary Budget Officer.<sup>39</sup> The committee reviews the draft budget estimates for the Australian National Audit Office and the Parliamentary Budget Office each year, and reports on them to the House on Budget day, prior to the presentation of the Budget.<sup>40</sup> The committee is also responsible, under the Public Service Act, for approving annual report requirements of Commonwealth departments.

Responses to ‘administrative’ matters raised in a report of the committee are made by way of an Executive Minute,<sup>41</sup> which is expected to be provided to the committee by the relevant Minister within six months of the report’s presentation. The committee authorises the publication of the Executive Minute as soon as practicable after it has been received and places it on the committee’s website. Executive Minutes received over the course of a year are then presented at the same time as the committee’s annual report to the Parliament.

Bills dealing with subjects related to the committee’s functions—for example, major changes in Commonwealth financial controls, management and audit and bills dealing with taxation law—have been referred to the committee and reported on. In each case

37 VP 2013–16/120 (21.11.2013). The separate Senate and House of Representatives Library Committees were discontinued.

38 Formerly Joint Committee of Public Accounts.

39 *Parliamentary Service Act 1999*, ss. 64Q, 64R, 64S, 64T, 64XA.

40 Pursuant to the *Auditor-General Act 1997*, s. 53 and *Parliamentary Service Act 1999*, s. 64R; e.g. H.R. Deb.(3.5.2016) 4245–6.

41 This replaced the Finance Minute previously prepared by the Department of Finance and Administration in response to all the committee’s reports.

the bills were referred by the House, standing orders having been suspended to allow it.<sup>42</sup>

The ability to consider and report on any circumstances connected with reports of the Auditor-General or with the financial accounts and statements of Commonwealth agencies is one of the main sources of the committee's authority—it gives the committee the capacity to initiate its own references and, to a large extent, to determine its own work priorities. This power is unique among parliamentary committees and gives the committee a significant degree of independence from the executive arm of government.

### *Parliamentary Standing Committee on Public Works*

The Parliamentary Standing Committee on Public Works is established by the *Public Works Committee Act 1969*. The committee's function is to consider each public work referred to it, and report to both Houses concerning the expedience of carrying out the work. It may also report on any other matters related to the work where the committee thinks it desirable that its views should be reported to the Houses. In its report the committee may recommend any alterations to the work which it thinks necessary or desirable to ensure that the most effective use is made of public moneys.

A motion may be moved in either House that a public work be referred to the committee for consideration and report.<sup>43</sup> If the Parliament is not in session or the House is adjourned for more than a month or for an indefinite period, the Governor-General (in council) may refer a work to the committee for consideration and report.

If the estimated cost of a public work exceeds a specified amount, that work cannot be commenced unless it has been referred to the committee; or the House of Representatives has resolved that, because of the urgency of the work, it is expedient that the work be carried out without having been referred to the committee;<sup>44</sup> or it is a work of an authority that has been exempted by regulation; or the Governor-General has declared that the work is for defence purposes and reference of it to the committee would be contrary to the public interest; or it has, with the agreement of the committee, been declared to be work of a repetitive nature. A public work referred to the committee cannot be commenced unless, after the report of the committee has been presented to both Houses, the House of Representatives has resolved that it is expedient to carry out the work.<sup>45</sup> Motions to refer works to the committee have been rescinded.<sup>46</sup>

### *Joint Committee on the Broadcasting of Parliamentary Proceedings*

The Joint Committee on the Broadcasting of Parliamentary Proceedings is established pursuant to the *Parliamentary Proceedings Broadcasting Act 1946*. The committee's primary function is to regulate the radio broadcast of the proceedings of the Parliament—see Chapter on 'Parliament House and access to proceedings'.

### *Other statutory committees*

At the start of the 45th Parliament five other joint statutory committees operated:

- the Parliamentary Joint Committee on Intelligence and Security established by the *Intelligence Services Act 2001*;

42 E.g. VP 1993–96/1145 (29.6.1994), 1327 (22.9.1994), 2678 (30.11.1995); VP 1996–98/266 (19.6.1996), 389 (22.8.1996).

43 But in practice the motion is moved in the House of Representatives, e.g. VP 2002–04/1336 (27.11.2003).

44 E.g. VP 2002–04/1319 (25.11.2003); VP 2004–07/2085 (16.8.2007) (2); VP 2010–13/240 (24.11.2010), 2503 (27.6.2013).

45 VP 1987–90/985 (1.12.1988); VP 1998–2001/1140 (8.12.1999).

46 VP 1922/93 (25.8.1922) (on notice); VP 1974–75/521 (4.3.1975) (by leave); VP 1976–77/389 (12.10.1976) (on notice); VP 2002–04/1748 (24.6.2004) (by leave—combined rescission and expediency motion). See S.O. 120 and 'Resolution or vote of the House rescinded or varied' in Chapter on 'Motions'.

- the Parliamentary Joint Committee on Corporations and Financial Services established by the *Australian Securities and Investments Commission Act 2001*;
- the Parliamentary Joint Committee on Law Enforcement established by the *Parliamentary Joint Committee on Law Enforcement Act 2010*;<sup>47</sup>
- the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, established by the *Law Enforcement Integrity Commissioner Act 2006*; and
- the Parliamentary Joint Committee on Human Rights, established by the *Human Rights (Parliamentary Scrutiny) Act 2011*.

## APPOINTMENT AND DURATION

### Committees of the House

A standing committee may be appointed by sessional or standing orders or by resolution of the House. It has not been the practice to require a resolution for the appointment of the standing committees appointed under the standing orders. They commence to operate when Members are appointed to them and cease to exist only upon dissolution or expiry of the House. A select committee is appointed by resolution of the House. Unless otherwise provided in its resolution of appointment, the committee ceases to exist on the presentation of its final report. The standing orders do not prevent any Member moving a motion for the appointment of a committee, but most motions brought to a successful vote are moved by a Minister.<sup>48</sup>

### Joint committees appointed by resolution

A joint committee appointed by resolution is established by a motion originating in one House and agreed to in the same terms by the other House. A proposal for a joint committee may originate in either House.

A resolution by the House proposing the establishment of a joint committee defines the nature and limits of the authority delegated to the committee in the same way as a resolution appointing a committee of the House. However, it also includes a paragraph stating:

That a message be sent to the Senate acquainting it of this resolution and requesting that it concur and take action accordingly.<sup>49</sup>

The Senate considers the resolution and may agree to its provisions, suggest modifications or reject the proposal altogether. Its decision is conveyed to the House by message. Where modifications are proposed, the House may choose to:

- accept them;<sup>50</sup>
- accept them and add modifications of its own;
- reject them;
- reject them and request the Senate to reconsider them;<sup>51</sup> or

47 Replaced the Parliamentary Joint Committee on the Australian Crime Commission on 25.11.2010.

48 E.g. VP 1998–2001/164–74 (3.12.1998); VP 2010–13/47–58 (29.9.2010). The Select Committee on Specific Learning Difficulties was appointed on motion moved by the Leader of the Opposition, VP 1974–75/286 (31.10.1974). *See also* VP 1970–72/147–8 (14.5.1970); VP 1962–63/549 (12.9.1963).

49 E.g. VP 1998–2001/164 (3.12.1998); VP 2008–10/31–2 (12.2.2008).

50 VP 1987–90/150 (26.10.1987). In 2004, at the commencement of the 41st Parliament, the Senate sent the House a message seeking modifications in respect of the Parliamentary Joint Committee on Corporations and Financial Services. However, in a later message it agreed to the original terms, VP 2004–07/46 (29.11.2004), 65 (1.12.2004).

51 VP 1974–75/828–9 (19.8.1975), 870 (26.8.1975).

- reject them and suggest an alternative.<sup>52</sup>

In the case of a total rejection, or a failure to respond to a message, the House may choose to appoint a committee of the House with the same purposes instead.<sup>53</sup>

Joint committees may be standing committees, usually established at the start of a Parliament, or select committees established for a specific short term purpose. Unless otherwise provided in its resolution of appointment,<sup>54</sup> the committee ceases to exist on the presentation of its final report.

### Joint committees established by legislation

A committee established under an Act of Parliament is required to be appointed as soon as practicable after the commencement of each Parliament. In practice this action is usually taken within the first few sitting days of the opening of the Parliament, when a motion appointing members to the committee is moved by a Minister in each House. If provided for by the relevant Act, a motion relating to the powers and procedures of the committee may also be moved. The committee continues in existence until the House of Representatives is dissolved or expires.

### Effects of dissolution and prorogation on committees

#### *Dissolution*

Upon dissolution of the House all House and joint committees cease to exist. Even if a committee is appointed in the next Parliament with the same terms of reference, powers and title, it is in fact a different committee. Consequently, committees need authorisation from the House to have access to the records of and evidence taken by the previous committee. Standing authorisation is now provided by S.O. 237.<sup>55</sup> Any inquiries not completed at the dissolution lapse and must be referred to the new committee if they are to be completed.

The provisions of the Acts establishing each of the joint statutory committees determine that the committees are to be appointed at the commencement of each Parliament, and that their members may hold office until the House of Representatives expires by dissolution or effluxion of time.

#### *Prorogation*

Committees of the House and joint committees appointed by standing order or by resolution for the life of the Parliament continue in existence and their membership continues, but they may not meet or transact business following prorogation. They may meet again in the new session of the same Parliament. Inquiries commenced in the previous session are resumed without action by the House, except that if the inquiry was referred to the committee by the House in the previous session, the inquiry is again

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52 VP 1973–74/139 (2.5.1973), 149 (3.5.1973).

53 In 1973 a Joint Committee on Environment and Conservation was proposed by the House, rejected by the Senate, and a House Standing Committee on Environment and Conservation established, VP 1973–74/124–5 (12.4.1973), 247 (30.5.1973); J 1973–74/216.

54 E.g. the resolution of appointment of the Joint Select Committee on Northern Australia was amended to give it a continuing monitoring role and the ability to (further) report from time to time, VP 2013–16/761 (27.8.2014); that of the Joint Select Committee on Gambling Reform included that the committee inquire into and report on ‘Such other matters relating to gambling referred by either House’, VP 2010–13/52 (29.9.2010).

55 Since 3.12.1998 (former S.O. 341).

referred by resolution of the House.<sup>56</sup> References by Ministers do not need to be re-referred.

A committee which is appointed on a sessional basis—that is, not for the life of a Parliament—ceases to exist upon prorogation. If the committee is to continue its activities in the new session, the committee and its membership must be re-appointed by resolution and its terms of reference renewed.<sup>57</sup> Standing order 237 authorises the new committee to use the minutes of evidence and records of the previous committee.

The Acts establishing each of the joint statutory committees provide that the committees are able to meet and transact business notwithstanding any prorogation of the Parliament.<sup>58</sup>

### *Different positions taken by the two Houses*

The effect of prorogation on committees has been a matter of some debate, and as noted below, the position traditionally taken by the House has not been adopted by the Senate. The practice of the House is reinforced by the following parliamentary authorities:

The effect of a prorogation is at once to suspend all business, including committee proceedings, until Parliament shall be summoned again.<sup>59</sup>

Committees appointed by standing order for a Parliament are terminated by a dissolution. In the case of committees appointed on a sessional basis, orders appointing them cease to have effect at prorogation.<sup>60</sup>

... a committee only exists, and only has power to act, so far as expressly directed by the order of the House which brings it into being. This order of reference is a firm bond, subjecting the committee to the will of the House; the reference is always treated with exactness and must be strictly interpreted ... The House may at any time dissolve a committee or recall its mandate, and it follows from the principle laid down that the work of every committee comes to an absolute end with the close of the session.<sup>61</sup>

Even though the standing orders appointing the Library and House Committees until 1998 contained the words ‘shall have power to act during recess’, it is considered that the House alone has no authority to grant such power. There have been a number of instances where a resolution appointing a committee has purportedly empowered the committee to sit during any recess. However, as the resolution of appointment in each case lapsed at prorogation, the purported power was not valid.

On 18 February 1954 the chairman of the Joint Committee on Foreign Affairs was advised by the Minister for External Affairs by letter:

I have had the matter you raised in your letter of the 2nd February looked into—that is, the status of the Joint Committee on Foreign Affairs following on the prorogation of Parliament.

I find that the Solicitor-General’s view is that the Foreign Affairs Committee ceases to exist when Parliament is prorogued.

Despite this view of the Solicitor-General, the committee was given the power to act during recess when it was appointed for the life of the Parliament in 1959.<sup>62</sup>

56 The effect of the motion of referral is considered to cease on prorogation. E.g. Standing Committee on Aboriginal Affairs: initial reference, VP 1976–77/512 (1.12.1976); re-referred, VP 1977/13 (10.3.1977). Committee of Privileges: initial reference, VP 1973–74/619 (6.12.1973); re-referred, VP 1974/34 (7.3.1974).

57 See VP 1977/10–11 (10.3.1977), 16 (15.3.1977), for the re-appointment of the Select Committee on Tourism, and VP 1977/12 (10.3.1977), 16 (15.3.1977), for the re-appointment of the Joint Select Committee on Aboriginal Land Rights in the Northern Territory.

58 This meant, for example, that the Public Works Committee was able to report in the second session of the 44th Parliament on inquiries into works referred during the first session, without the works having to be re-referred by the House.

59 *May*, 24th edn, p. 145.

60 *May*, 24th edn, p. 835. Since 1975 the House of Commons has adopted the practice of appointing the members of many of its committees for the life of the Parliament but they may not meet after prorogation, ‘Dissolution and prorogation: answers to questionnaire’, *The Table XLIII*, 1975, p. 76.

61 Josef Redlich, *The procedure of the House of Commons*, vol. II, Archibald Constable, London, 1908, p. 196.

62 VP 1959–60/25 (25.2.1959).

When the Joint Committee on the Australian Capital Territory was first established as a sessional committee in 1956, it was given power to sit during recess,<sup>63</sup> but the power was not included in the terms of the resolution when it was re-appointed in the new session in 1957.<sup>64</sup> It was once again given the power to sit during recess when it was appointed for the life of the Parliament in 1959.<sup>65</sup>

In 1957 the House agreed to a Senate modification to the resolution re-appointing the Joint Committee on Constitution Review, which empowered the committee to sit during any recess. In speaking to the modification the Leader of the House, while acknowledging the correct constitutional position, made the following observation:

... We having decided that henceforth we shall have a session of the Parliament annually, and it being the desire, I think, of all members of the Parliament that committees such as the Constitution Review Committee, which has a valuable public service to perform, should continue to function in any period of recess between the prorogation of one session of the Parliament and the formal opening of another, there is sound practical sense in the suggestion that these committees be enabled to continue during any such recess.<sup>66</sup>

The power to sit during any recess was renewed on the re-appointment of the committee in 1958, but not in 1959.<sup>67</sup>

In considering the question of whether the Senate and its committees have the power to meet after a dissolution of the House of Representatives,<sup>68</sup> a Solicitor-General's opinion of 23 October 1972 stated, in part:

During a session each House can control its own proceedings, exercise its powers and privileges and adjourn from time to time. However, once the Parliament is prorogued, I think each House would be effected [*sic*] in the same way as the House of Commons. Section 49 of the Constitution, in my view, has this effect, because it provides (there being no legislation of the Commonwealth Parliament on the subject) that the powers, privileges and immunities of the Senate and the House of Representatives and the members and the committees of each House shall be those of the Commons House of Parliament of the United Kingdom and of its members and committees, at the establishment of the Commonwealth. However, quite apart from s. 49, I think support for this view is found in ss. 1 and 5 of the Constitution and the constitutional theory which underlies them. The Houses are called together to exercise their functions as part of the Federal Parliament. At the discretion of the Crown and subject to certain constitutional safeguards the Crown can terminate the session. With the termination of the session, this power to deliberate and pass bills and their ability to exercise these powers as part of the Parliament ceases until they are called together again. It is consistent with this clear position, that between sessions neither they nor their committees should be able to exercise any powers. This could be found inconvenient to the work of committees but I think it is the effect of the provisions of the Commonwealth Constitution.

The same opinion drew attention to possible consequences of committees meeting without having the constitutional authority to do so:

... witnesses who gave evidence would not be entitled to the protection of the House and their evidence could be actionable at the suit of third parties or could be used to incriminate them. Likewise statements by [committee members] during hearings would lack the protection which the privileges of the House normally afford to [Members]. In camera hearings may be no protection. Witnesses who were summoned to give evidence would, of course, be well advised to refuse to do so. If they did, the [House] clearly could not meet to punish them. When ultimately it did meet there may be little purpose served in committing them for contempt because by then the [House's] authority and protection would be available and they would, no doubt, willingly answer questions.

63 VP 1956-57/368-9 (8.11.1956).

64 VP 1957-58/12-3 (20.3.1957).

65 VP 1959-60/27-8 (26.2.1959).

66 VP 1957-58/24 (28.3.1957); H.R. Deb. (28.3.1957) 339-40.

67 VP 1958/9-11 (27.2.1958); VP 1959-60/111-2 (30.4.1959).

68 The opinion concluded that they do not have this power. It argued that 'the effect of dissolution [of the House], is in substance, to dissolve the Parliament even though two of the constituent bodies remain'.

Other legal authorities have agreed with this view of the effect of prorogation on committees.<sup>69</sup> However, the Senate, supported by other legal opinion, has taken a different position.<sup>70</sup>

A number of opinions relevant to this matter were presented to the Senate on 19 and 22 October 1984 when the Senate passed a resolution concerning meetings of the Senate or its committees after dissolution of the House.<sup>71</sup> *Odgers* reflects the position that Senate committees appointed for the life of a Parliament continue in existence until the day before the first meeting of the next Parliament, and Senate standing orders and resolutions of appointment give most Senate committees the power to meet during recess or following dissolution of the House,<sup>72</sup> and they have done so.<sup>73</sup>

## MEMBERSHIP

### Eligibility to serve on committees

Committee service is considered to be one of the parliamentary duties of private Members. Office holders and Ministers have not normally served on committees except in an ex officio capacity on committees concerned with the operations of the House or the Parliament (*see below*).<sup>74</sup> It has been considered inappropriate for Ministers to serve on investigatory committees, given the committees' role of scrutinising the Executive, and the standing orders now provide that any Member appointed as a Minister (by definition including Parliamentary Secretary or Assistant Minister) immediately ceases to be a member of all committees.<sup>75</sup> It is also considered that a Member may not participate in committee proceedings until he or she has been sworn in, even though the Member may have been appointed to the committee.<sup>76</sup>

Except with their consent, or as specified in a standing or other order, the Speaker, the Deputy Speaker or the Second Deputy Speaker may not be appointed to serve on any committee.<sup>77</sup> In the case of some statutory committees, for example the Public Works Committee, the Acts establishing them provide that certain office holders, such as the Speaker or the Deputy Speaker, or a Minister, are not able to be appointed to the committee.

### *Pecuniary and personal interest*

A Member may not sit on a committee if he or she has a particular direct pecuniary interest in a matter under inquiry by the committee.<sup>78</sup> The interest concerned has been interpreted in the very narrow sense of an interest peculiar to a particular person. If, for example, a Member were an owner of bank shares he or she would not, for that reason

69 See Geoffrey Lindell, 'Parliamentary inquiries and government witnesses', *Melbourne University Law Review*, vol. 20, 1995, p. 399, expressing agreement with a conclusion by Commonwealth Law Officers to the effect that prorogation (and dissolution) means that committees should not continue to operate.

70 See *Odgers*, 6th edn, pp. 972–82 and 14th edn, pp. 502–3, 608–10.

71 See *Odgers*, 14th edn, pp. 610–14.

72 *Odgers*, 14th edn, p. 502–3 (except in the case of a double dissolution).

73 See for example, hearings of the Senate Select Committee on the Scrafton Evidence, 1 September 2004 (committee established 30 August, dissolution of House 31 August).

74 The Chairman of Committees was chair of the Joint Committee on the Parliamentary Committee System and was a member of several general purpose standing committees in the 35th Parliament.

75 S.O. 229(d). Before 2016 practice was not so strict, *see* previous editions.

76 E.g. case of Mr Katter at commencement of 41st Parliament (appointed to Industry and Resources Committee 2.12.2004, sworn in 8.3.2005, VP 2004–07/77 (2.12.2004), 213 (8.3.2005)).

77 S.O. 230. E.g. VP 2002–04/843 (27.3.2003).

78 S.O. 231. Between 1984 and 1988 an obligation was imposed on Members to declare 'relevant interests' at the beginning of a speech in the House or in a committee, or after a division in which the Member proposed to vote was called.



alone, be under any obligation to disqualify himself or herself from serving on a committee inquiring into the banking industry, as the interest would be one held in common with many other people in the community. In the first instance it is a matter for individual committee members to judge whether they may have a conflict of interest in an inquiry.

Before 1998 the relevant standing order prevented a Member from serving on a committee 'if personally interested in its inquiry'. The former provision was observed in 1955 when a member of the Committee of Privileges took no active part during an inquiry in which he was personally interested in that he was the Member who had raised the complaint. The House has resolved that a member of the Committee of Privileges be discharged from attendance on the committee during its consideration of particular matters. Another Member has been appointed to the committee in such cases.<sup>79</sup> In the 37th Parliament a member of the Committee of Privileges did not participate in an inquiry concerning the unauthorised disclosure of information from another committee on which he served.<sup>80</sup> In another inquiry by the committee in the same Parliament a Member who had spoken in the House when the matter was raised withdrew from the committee for the duration of the inquiry.<sup>81</sup>

On the appointment of members to the Select Committee on Grievances of Yirrkala Aborigines, a Minister on a point of order asked whether a Member who had been nominated to serve on the committee should be excluded from the committee because the Member was a litigant in related court proceedings. The Speaker stated:

... the Chair is not able to determine whether or not a member is personally interested in a committee's inquiry and cannot properly be called upon to so decide. A member must be guided by his own feelings in the matter and by the dictates of respect due to the House and to himself. Having regard to the existence of the standing order and its terms, it is likely that if a matter of this kind is brought to issue it will be one for the House to decide.<sup>82</sup>

The Member served on the committee.

In other instances members of committees have decided not to participate in an inquiry or a facet of an inquiry because of conflict of interest considerations. In 1977 a member of the Joint Committee on the Australian Capital Territory chose not to take part in proceedings of the committee whilst items in which that member had an investment interest were under discussion. In 1981 a member of the Joint Committee of Public Accounts did not take part in that part of an inquiry dealing with the ACT Schools Authority because the member had chaired the Authority in the past.<sup>83</sup>

Where there may be the possibility of a conflict of interest of some kind, or of the perception of such a conflict, Members have made an oral declaration in the form of a statement or a written statement on the matter at a meeting of the committee at an early stage of the particular inquiry, even though, technically, there may have been no question of an infringement of the standing order.<sup>84</sup>

If the right of a Member to sit on a committee is challenged, the committee may report the matter to the House for resolution.<sup>85</sup>

79 VP 1978–80/35 (1.3.1978); see also H.R. Deb. (7.4.1959) 903; H.R. Deb. (18.3.1959) 772–3.

80 VP 1993–96/546 (24.11.1993).

81 VP 1993–96/605 (16.12.1993). And see 'Committee of Privileges' in Ch. on 'Parliamentary privilege'.

82 VP 1962–63/559 (19.9.1963); H.R. Deb. (19.9.1963) 1176–9.

83 Joint Committee of Public Accounts, *Report 193*, PP 84 (1982) vii.

84 E.g. Committee of Privileges, minutes, 5.5.1994, PP 136 (1994); Standing Committee on Finance and Public Administration, minutes, 18.2.1991; Standing Committee on Primary Industries and Regional Services, minutes, 13.10.1999.

85 S.O. 231.

### *Suspension from the House*

A Member suspended from the service of the House may take part in committee proceedings (other than of the Federation Chamber) during the period of suspension.<sup>86</sup>

### *Ex officio members*

The Speaker is ex officio a member and chair of the Selection Committee and of the House Appropriations and Administration Committee, and a member of the House Committee. The Deputy Speaker is ex officio a member of the Selection Committee in the Speaker's absence. The Speaker (together with the President of the Senate) is ex officio a member of the Joint Committee on the Broadcasting of Parliamentary Proceedings. The Deputy Speaker (together with the Deputy Senate President) is ex officio a member of the Joint Standing Committee on the National Capital and External Territories. Ex officio members of the Joint Standing Committee on the New Parliament House included the Speaker and President of the Senate and the Minister responsible for administering the Parliament House Construction Authority Act.<sup>87</sup>

The Chief Government and Opposition Whips and the Third Party Whip, or their nominees, are ex officio members of the Selection Committee. The Leader of the House and the Deputy Leader of the Opposition, or their nominees, are ex officio members of the Committee of Privileges and Members' Interests.

Provision is rarely made for ex officio membership of committees other than committees concerned with the operations of the House or the Parliament. However, the chair of the Standing Committee on Expenditure (1976) was an ex officio member of the Joint Committee of Public Accounts and vice versa.<sup>88</sup> This arrangement was intended to ensure adequate liaison between the two committees.<sup>89</sup>

### *Number of members and party composition*

The number of members of a committee is determined by the membership provisions of the relevant standing orders, or by the resolution or Act establishing the committee.

In some cases provision may be made for numbers to be supplemented for individual inquiries, or for members to be substituted, to allow Members with particular expertise or interests to participate. Supplementary members have all the participatory rights of committee members; however they may not vote. A general purpose standing committee may be supplemented with up to four other Members for an inquiry.<sup>90</sup> For the purposes of the consideration of a bill referred to a committee for an advisory report under the provisions of standing order 143(b), one or more members of the committee may be replaced by other Members by motion moved on notice.<sup>91</sup>

From time to time the number of members of a committee may be increased. In the case of committees appointed by standing or sessional order it is necessary to suspend (or amend) standing (and sessional) orders to enable this to be done.<sup>92</sup>

In most cases the standing order or resolution establishing a committee of the House will also determine the party composition of its membership—that is, by specifying the

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<sup>86</sup> See Ch. on 'Control and conduct of debate'.

<sup>87</sup> VP 1987–90/39–40 (17.9.1987).

<sup>88</sup> The chair of the Joint Committee of Public Accounts could nominate in his place a member of that committee who was a Member of the House of Representatives.

<sup>89</sup> H.R. Deb. (27.6.1976) 2613.

<sup>90</sup> S.O. 215(d)—a maximum of two extra government and two extra non-government or non-aligned Members.

<sup>91</sup> S.O. 229(c).

<sup>92</sup> E.g. VP 1962–63/39 (7.3.1962); VP 1954–55/202 (12.5.1955).

numbers of Members to be drawn from government and from non-government parties. In practice each party's representation on a committee is equated as nearly as possible to its numerical strength in the House, and consequently the relevant standing orders may change from Parliament to Parliament to reflect election results. Special provision has sometimes been made for independent Members.<sup>93</sup>

In the 45th Parliament the general purpose standing committees consisted of either eight or ten members. Eight member committees had five government Members and three non-government Members. Ten member committees had six government Members, three opposition Members and one non-aligned Member.

### Appointment of Members

The Members to be appointed are normally elected or selected within their respective parties. The process is organised by the whips. Independent Members liaise with the opposition whips in respect of non-government positions, or may nominate themselves. Shadow ministers and shadow parliamentary secretaries often nominate for committees relevant to their shadow portfolios.

Members are formally appointed to or discharged from all committees on motion moved on notice or by leave.<sup>94</sup> When the House is not sitting, and not expected to meet for at least two weeks, party whips may write to the Speaker nominating the appointment or discharge of a member. The change operates from the time the nomination is received by the Speaker. The Speaker reports the change to the House at the next sitting when it is confirmed by resolution.<sup>95</sup>

An unusual situation arose in 1952 because of the Opposition's declared intention not to nominate members to serve on the proposed Joint Committee on Foreign Affairs. The resolution of appointment transmitted from the House was amended by the Senate to provide:

That the persons appointed for the time being to serve on the Committee shall constitute the Committee notwithstanding any failure by the Senate or the House of Representatives to appoint the full number of Senators or Members referred to in these resolutions.

The House agreed to the modification.<sup>96</sup>

On several occasions a resolution of appointment of a committee has specified that the membership be identical to that of its predecessor in the previous Parliament.<sup>97</sup>

### Vacancies

A vacancy on a committee may occur for the following reasons:

- resignation for personal reasons;
- appointment of a Member as a Minister or Parliamentary Secretary/Assistant Minister;<sup>98</sup>
- resignation on appointment to any other office that may preclude membership of a committee—for example, election to the office of Speaker or Deputy Speaker;
- resignation due to personal interest in an inquiry;
- resignation as a way of expressing dissent;

<sup>93</sup> E.g. VP 1996–98/65 (7.5.1996) (Selection Committee).

<sup>94</sup> S.O. 229(a).

<sup>95</sup> S.O. 229(b).

<sup>96</sup> J 1951–53/145–6 (27.2.1952); VP 1951–53/273 (27.2.1952), 278 (28.2.1952).

<sup>97</sup> E.g. Joint Select Committee on Parliamentary and Government Publications, VP 1964–66/25–6, 27 (5.3.1964).

<sup>98</sup> S.O. 229(d). The vacancy is now immediate and automatic.

- resignation from the House; or
- death.

If a Member no longer wishes to serve on a committee, the Member informs the whip of his or her party and should advise the chair of the committee in writing. A motion is then moved in the House by a Minister to discharge the Member from attendance on the committee. A replacement is also appointed by motion. Normally, both the discharge and the appointment are moved simultaneously in the one motion.<sup>99</sup> A Member may not simply resign; the Member must be discharged by a motion moved in the House.<sup>100</sup>

In 2004 all opposition members of the Standing Committee on Constitutional and Legal Affairs were discharged (at their initiative) together, without replacement members being appointed.<sup>101</sup> It was considered that as the committee had been properly constituted, it continued to be properly constituted despite the subsequent absence of members or a class of members specified in its membership provisions.

In 2010 the House suspended standing orders to make special provision for the first meeting of the Selection Committee in the 43rd Parliament; one of the effects of the suspension was that the committee was properly constituted despite a vacancy in its membership (due to a delayed nomination) at its first meeting.<sup>102</sup>

## CHAIR

### Election or appointment

#### *Chair elected*

While chairs of House committees are now appointed (*see below*), resolutions of appointment of joint committees generally provide for a chair to be elected by each committee. In conducting the election of the chair, the committee secretary, having drawn attention to any special provision in the standing orders or resolution of appointment (such as a requirement that the committee elect a government member as chair), should call for nominations, each of which must be seconded. If only one member is nominated, as is usually the case, the secretary declares the member elected as chair and invites that member to take the chair. If more than one member is nominated, the election is conducted by secret ballot in accordance with the procedures set down by the standing orders for the election of Speaker, Deputy Speaker and Second Deputy Speaker, as far as they are applicable.<sup>103</sup>

A Member may be elected chair in absentia. It is considered that the requirements for election of chair of a committee should not be more stringent than those applying to election of the chair of the Federation Chamber (that is, the Deputy Speaker).<sup>104</sup>

In the case of joint standing committees, the resolutions of appointment<sup>105</sup> or the resolutions supplementing statutory provisions<sup>106</sup> usually provide that committees elect either a government member or a member nominated by the Government Whip or

99 E.g. VP 2002–04/1452 (19.2.2004).

100 H.R. Deb. (5.9.1905) 1919.

101 H.R. Deb. (3.8.2004) 31815, 31817, 31892–3; VP 2002–04/1764–5 (3.8.2004).

102 VP 2010–13/68 (30.9.2010).

103 S.O. 11. *See* Ch. on ‘The Speaker, Deputy Speakers and officers’. In the 32nd Parliament a ballot was conducted for the chairs of the Standing Committee on Expenditure and the Joint Select Committee on Parliamentary Privilege. In the 41st Parliament a ballot was held for the chair of a House standing committee when two government members were nominated.

104 Under S.O. 14(a) nominees for Deputy Speaker and Second Deputy Speaker are not required to be present or formally accept nomination.

105 VP 1998–2001/164–74 (3.12.1998).

106 VP 1998–2001/160–4 (3.12.1998).

Leader of the Government in the Senate as chair, but this practice has not always been followed. For example, the Joint Select Committee on Parliamentary Privilege had such a provision in its first resolution of appointment in 1982. The provision was omitted when the committee was re-established in 1983 following a change of government, thus allowing the previous chair, by then an opposition Member, to be re-elected.<sup>107</sup>

### *Chair appointed*

Chairs of House committees are appointed by the Prime Minister.<sup>108</sup> Prior to the 44th Parliament, chairs were elected, although normally required to be government members. In practice this meant that the Prime Minister's nominee would usually be elected.

In 1941 the chairs of several joint committees were appointed by name in the resolution establishing the committees.<sup>109</sup> In some instances the House requested the Senate to appoint a Senator as chair of a joint committee, which it did.<sup>110</sup> Such a request was again made and agreed to in 1957 in relation to the Joint Committee on Constitutional Review.<sup>111</sup>

In some cases the chair of a committee is appointed *ex officio*; for example, the Speaker is *ex officio* chair of the Selection Committee<sup>112</sup> and the House Appropriations and Administration Committee.<sup>113</sup> In respect of the Joint Standing Committee on the New Parliament House, the resolution provided for the Speaker and President to be joint chairs.<sup>114</sup>

### *Procedural authority*

The formal powers of a chair of a select committee were traditionally viewed as being substantially the same as those of the chair of a committee of the whole House. Although the committee of the whole no longer exists in the House, relevant precedents are considered to continue to apply, where appropriate. As, under the former procedures, no appeal could be made to the Speaker regarding the decisions and rulings of the Chairman of Committees in a committee of the whole, it was considered that no appeal could be made regarding the decisions and rulings of a chair of a select or standing committee. Within the framework set by the House (in terms of the provisions of the standing orders and any resolution of appointment), formal authority over select and standing committee procedures therefore lies with the chair and the committee itself, and the Speaker may not take formal notice of committee proceedings in so far as purely procedural matters are concerned. During a committee meeting a chair's procedural authority is as exclusive as that of the Speaker in the House.

While the Speaker's advice is occasionally sought on complex procedural matters, there is rarely any scope for the Speaker to intervene on committee procedures. The Speaker would normally interfere in such matters only if they were of general significance or affected the allocation of resources to a committee, which is largely the Speaker's responsibility. Nevertheless, Speakers' rulings on procedural matters are significant as precedents. Further, committee chairs must have regard to the practice of

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107 VP 1980-83/805-6 (23.3.1982); VP 1983-84/52-3 (4.5.1983).

108 S.O. 232(a).

109 Joint Committee on Social Security, VP 1940-43/158, 161-2 (3.7.1941).

110 Joint Committee on Profits, VP 1940-43/158-9, 162 (3.7.1941).

111 VP 1956-57/168-9 (24.5.1956) (committee originally named Joint Committee on Constitutional Change), 171 (29.5.1956), 341 (25.10.1956).

112 S.O.222(b).

113 S.O. 222A(c).

114 VP 1987-90/39-40 (17.9.1987).

the House where this is applicable to committee proceedings—for example, in respect of the sub judice convention.

Any concern about committee procedure or authority can be brought to the attention of the House in a special report, a dissenting report or in a debate on a motion that the House take note of a report.

While these courses have been adopted, no formal action has been taken by the House.<sup>115</sup> It is doubtful as to whether the Speaker, rather than the House, could exercise any authority in such a situation. In 1955 the Speaker replied to questioning on the extent of the powers and functions of the Committee of Privileges:

Such questions should not be directed to the Speaker; they are matters for the House, not for me. I am not a member of the Committee of Privileges. As the House appointed the committee, the House must answer questions in relation to it.<sup>116</sup>

Unlike the Speaker, the chair of a committee takes part in the substance of discussions, as well as playing a procedural role at hearings and deliberative meetings. A chair's rights to take part in proceedings are no less than those of other members, except that in divisions the chair may only exercise a casting vote.<sup>117</sup> However, the chair exercises a dual role, for example in ensuring that rights of witnesses are observed.

### Administrative authority

The Speaker, or an official appointed by the Speaker, has exclusive authority to approve expenditure for the running of the House.<sup>118</sup> In 1944 three members of the Joint Committee on Social Security resigned from the committee in protest at the Speaker's insistence that a parliamentary employee replace a public service employee who had earlier been seconded to serve as clerk to the committee (i.e. committee secretary) with the consent of the Speaker and on the recommendation of the committee. No action was taken by the House to question the Speaker's exercise of his authority to appoint committee staff but some Members expressed disapproval.<sup>119</sup> (The power of employment is now held by the Clerk of the House.<sup>120</sup>)

The Speaker is not involved in normal day-to-day funding or related decisions in respect of committees, although a continual oversight of operations, administration and expenditure is maintained, and in instances involving unusual or large expenditures the Speaker may be consulted. The Speaker's statutory powers are clearly exclusive in these areas and a lack of a reference to the Speaker in resolutions of appointment or sessional orders does not diminish either the Speaker's authority or obligations. In exercising these responsibilities it is considered that the Speaker would be obliged to intervene in committee operations where it was believed that a committee was using or seeking resources for activities which exceeded its delegated authority. Proposed overseas visits by the members of a committee are subject to the provision of additional funding. In

115 See for example the dissent of A. J. Forbes in Joint Committee on the Parliamentary Committee System, *A proposed system of committees for the Australian Parliament, interim report*, PP 275 (1975) 95–7; the dissent of G. M. Bryant and L. R. Johnson in Joint Select Committee on Aboriginal Land Rights in the Northern Territory, *Report*, PP 351 (1977) 72; H.R. Deb. (18.8.1977) 419, 423; dissenting reports to Committee of Privileges report on allegations by a Member, PP 498 (1989); dissenting report in Standing Committee on Family and Human Services, *The winnable war on drugs—The impact of illicit drug use on families*, PP 187 (2007) 313–4. See also statements at time of presentation of reports of the Legal and Constitutional Affairs Committee, critical of the operation and chair of the committee, H.R. Deb. (9.8.2004) 32425; H.R. Deb. (11.8.2004) 32768–71.

116 H.R. Deb. (7.6.1955) 1438.

117 S.O. 232(a). Chairs of joint committees may have a deliberative vote as well—see p. 675. See also 'Powers of chair' in *May*, 24th edn, p. 811.

118 *Public Governance, Performance and Accountability Act 2013*, s.71.

119 H.R. Deb. (29.3.1944) 2203–24; S. Deb. (30.3.1944) 2281–91.

120 *Parliamentary Service Act 1999*, s. 22.

such cases an approach is made to the Presiding Officers for approval and allocation of such funding—*see* ‘Meetings overseas’ at page 672.

The chair of a committee has a role in respect of matters arising from committee operations but the committee itself may be involved in significant decisions or actions involving matters of principle. Within the framework set by relevant regulations and directions, and subject to the ultimate authority of the Speaker, technically decisions to authorise expenditure, as well as those relating to staffing matters, fall to the responsible parliamentary staff members.

Some joint committees are serviced by the Department of the Senate. In those instances the role and powers of the President of the Senate and the Clerk of the Senate are similar to those of the Speaker and the Clerk of the House, although in the case of the Senate the Appropriations and Staffing Committee may also be involved in some aspects.

### Deputy chair

Deputy chairs of House committees are appointed by the Leader of the Opposition.<sup>121</sup> Prior to the 44th Parliament deputy chairs, as well as chairs, were elected. In practice an opposition member was normally elected.

In the case of joint committees resolutions of appointment generally provide for a deputy chair to be elected by each committee and for the deputy chair to be a non-government member. In the past, it has been provided on some occasions that the chair appoint a member of the committee as deputy chair ‘from time to time’—that is, as circumstances demanded. In such cases the same member was not necessarily appointed each time.<sup>122</sup>

In practice the deputy chair of a joint committee is normally an opposition member. The resolution of appointment of the Joint Committee on the Parliamentary Committee System directed that the committee elect as deputy chair one of the members nominated by the Leader of the Opposition. The deputy chair was also to be a member from a different House from the chair.<sup>123</sup>

When a deputy chair is to be elected the chair conducts the election. It is considered that the provisions of standing order 14, which provide for the filling of a vacancy in the office of Deputy Speaker and Second Deputy Speaker should be followed as appropriate.

The deputy chair acts as chair of the committee at any time when the chair is not present at a meeting. If neither the chair nor deputy chair is present at a meeting, the members present elect another member to act as chair at the meeting.<sup>124</sup>

## POWERS OF COMMITTEES

### Source of power

Section 49 of the Constitution confers on both Houses the powers, privileges and immunities possessed by the United Kingdom House of Commons in 1901. Section 50 confers on each House the right to make rules or orders concerning its powers and

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121 S.O. 232(b).

122 Standing Committee on Road Safety, VP 1974–75/51–2 (18.7.1974); Select Committee on Aircraft Noise, VP 1970–72/33–4 (11.3.1970).

123 VP 1976–77/59–60 (16.3.1976).

124 S.O. 232(b).

conduct of business. This power extends to committees and is delegated to a committee by the standing orders, by the resolution of appointment, or by the relevant statute.

A committee possesses no authority except that which it derives by delegation from the House or Houses appointing it, or which has been specifically bestowed by legislation in the case of statutory committees. The power of a House or joint committee is determined by the power possessed by the House or Houses and the degree to which this has been delegated.

‘Powers’ explicitly granted to a committee by the standing orders are:

- to appoint subcommittees (S.O. 234);
- to conduct proceedings using approved means (S.O. 235(a));
- to conduct proceedings at any time or place as it sees fit, and whether or not the House is sitting (S.O. 235(c));
- to call witnesses and require that documents be produced (S.O. 236);
- to consider and make use of the evidence and records of similar committees appointed during previous Parliaments (S.O. 237);
- to confer with a similar committee of the Senate (S.O. 238);
- to authorise publication of any evidence given before it or documents presented to it (S.O. 242); and
- to report from time to time (S.O. 243).

While the use of the word ‘power’ is traditional, most of these matters can be regarded as authorisations. The real power possessed by a committee, as the word is more usually understood, is the power to order the attendance of witnesses and the production of documents.

These powers and authorisations apply to all committees of the House,<sup>125</sup> except as provided in another standing or sessional order, or as otherwise ordered by the House. Similar powers are also generally included in resolutions establishing joint committees.

A committee’s powers should not be taken for granted. To determine the extent of the authority delegated to any committee, recourse must be had to the standing and sessional orders, and if applicable, to a committee’s resolution of appointment and any later amendments, and any other orders agreed to by the House subsequent to the committee’s appointment.

In the case of a statutory committee, the constituting Act must be consulted. In some cases the Act makes provisions for terms of reference, powers and procedures. This is the case in respect of the Joint Committee on Public Works, the Joint Committee of Public Accounts and Audit, and the Joint Committee on Intelligence and Security. In some other cases, such as the Joint Committees on Corporations and Financial Services, Law Enforcement, and Law Enforcement Integrity, it is provided that matters relating to the powers and proceedings of the committee shall be determined by resolution of both Houses of the Parliament.<sup>126</sup> This approach may be seen as avoiding some of the practical and theoretical difficulties that could be associated with complex and detailed statutory provision for committees.

<sup>125</sup> The situation prior to the amendment of standing orders on 3.12.1998 is covered in editions 1 to 3.

<sup>126</sup> E.g. VP 1993–96/78–9 (13.5.1993), 131 (27.5.1993), 150 (17.8.1993), 901–2 (24.3.1994); VP 1998–2001/160–4 (3.12.1998); VP 2010–13/44–7 (29.9.2010).



## Derivation and extent of investigatory powers

Some doubts have been expressed as to the precise extent of the investigatory powers which the Houses may exercise or delegate to committees. By virtue of section 49 of the Constitution the powers of the House and of committees to which it delegates these powers are those of the United Kingdom House of Commons at 1901. Based on this there could be a claim of extremely wide powers. In 1845 Lord Coleridge said that as the 'general inquisitors of the realm' the Commons could inquire into anything it wanted to. A corollary of this was the authority to compel the attendance of witnesses.<sup>127</sup> The Commons exercised these powers in aid of both its legislative responsibilities and of its responsibility as the 'Grand Inquest of the Nation'. There was no limit to the subject matters on which the Commons could legislate and as the 'Grand Inquest of the Nation' it considered itself entitled to advise or remonstrate with the Crown on all affairs of State and in regard to any grievance of the monarch's subjects. Thus, there was no practical limit to the subject matters into which the House of Commons could inquire at 1901.

In *R. v. Richards: ex parte Fitzpatrick and Browne* the High Court held in unequivocal terms that section 49 is incapable of a restricted meaning and that the House of Representatives, until such time as it declares otherwise, enjoys the full powers, privileges and immunities of the United Kingdom House of Commons.<sup>128</sup> If such is the case, either House of the Commonwealth Parliament, or its committees, could be said to have the power to conduct any inquiry into any matter in the public interest and to exercise, if necessary, compulsive powers to obtain evidence in any such inquiry.

On the other hand, there is the view that the compulsive investigatory powers which the House may delegate to its committees is limited to matters on which the Parliament may legislate. This view was argued on the basis of a judgment by the Judicial Committee of the Privy Council in 1914. It was held that the Commonwealth Parliament could not legislate to grant a royal commission, appointed by the Commonwealth Government, power to compel witnesses to attend and give evidence before it unless the royal commission's terms of reference were limited to matters on which the Parliament could legislate.<sup>129</sup> It has been suggested that neither House could achieve by resolution that which it could not achieve by statute and that consequently the limitations on the granting of compulsive powers to royal commissions must apply equally to the delegation of such powers to parliamentary committees.<sup>130</sup> However, there must be some doubt as to whether a court would find the so-called *Royal Commissions Case* relevant to the question of the powers of parliamentary committees, as that case was concerned with a different form of inquiring body and the exercise of a different head of constitutional power.<sup>131</sup>

Attorney-General Greenwood and Solicitor-General Ellicott did not accept that the House has unlimited power of inquiry:

Although, for the time being, s. 49 of the Constitution has conferred on each House the powers of the Commons as at 1901, it does not, in our view, enlarge the functions which either House can exercise. In considering the effect of s. 49, it is important to bear in mind that there is a distinction between 'powers' and 'functions'. The section, as we construe it, is intended to enable the Commonwealth Parliament to declare what the powers, privileges and immunities of its Houses and their members

127 *Howard v. Gosset* (1845) 10 QB 359 at 379–80, quoted in PP 168 (1972) 3.

128 (1955) 92 CLR 157 at 164–70.

129 *A.G. (Commonwealth) v. Colonial Sugar Refining Company Ltd* (1914) AC 237.

130 Enid Campbell, *Parliamentary privilege in Australia*, 1966, pp. 163–4; see also G. Sawyer, 'Like a host of archangels', in the *Canberra Times*, 7 April 1971.

131 The existence of doubt is acknowledged in D. C. Pearce, *Inquiries by Senate committees* (1971) 45 ALJ 659. See also Enid Campbell, *Parliamentary privilege*, Federation Press, 2003, pp. 153–5.

and committees shall be for the purpose of enabling them to discharge the functions committed to them under the Constitution. What the Commons did as ‘the Grand Inquest’ was not done in aid of its legislative function but represented the exercise of an independent and separate function said to be as important as that which it exercised as part of the legislature. However, it would not, in our view, be proper to construe s. 49 as conferring such an important and independent function on the Australian Houses of Parliament. Not only is it unlikely that such a function would be left to implication and then only until Parliament provided otherwise but the exercise of such a function by the House of Representatives or the Senate would in some respects be inconsistent with the Constitution. For instance, the notion that either House could impeach a person for trial before the other is inconsistent with the notion that judicial power is to be exercised by the Courts as provided in Chapter III. Again, the Commons could as the Grand Inquest inquire into any matter or grievance. It would surely be inconsistent with the federal nature of our Constitution that a House of the Commonwealth Parliament could inquire into a grievance which a citizen had in relation to the execution of a law wholly within State competence.

It is our view, therefore, that neither of the Houses of the Commonwealth Parliament has been vested with the function which the Commons exercised as the Grand Inquest of the Nation. This view was also expressed by Forster J. in *Attorney-General v. Macfarlane & Ors.*<sup>132</sup>

Nevertheless, the law officers differentiated between the virtually unlimited power of inquiry and the legal limitations of the inquiry power, which would arise only when it was sought to enforce that power, for example, by compelling persons to attend a parliamentary committee.<sup>133</sup> A similar view was taken by Fullagar J. in *Lockwood v. The Commonwealth.*<sup>134</sup>

Even though Greenwood and Ellicott stated that there are legal limits to the facts and matters into which the Houses can, by compulsion, conduct an inquiry, for practical purposes they also noted that these limits are extremely wide, as a consideration of the various heads of Commonwealth legislative power will quickly reveal.<sup>135</sup> They added that each House:

... is entitled to investigate executive action for the purpose of determining whether to advise, censure or withdraw confidence. It would indeed be odd if a House could not inquire into the administration of a department of State by a Minister in order to judge his competence before determining whether to advise him, censure him or withdraw its confidence in him. Each House of the Commonwealth Parliament can, therefore, in our view, as a necessary consequence of the existence of responsible government, exercise investigatory powers through committees in order to exercise what might broadly be called an advisory function.<sup>136</sup>

A recognised authority on constitutional law, Professor Geoffrey Lindell, has observed that, even if the power to establish parliamentary committees is federally limited, two factors would lessen the practical significance of such a limitation: the limitation may not come into play unless a committee was armed with powers to compel the attendance of witnesses and the production of documents, and the difficulty of establishing that a matter may never be relevant to the Commonwealth’s legislative powers.<sup>137</sup>

It may be a very long time before the courts make any authoritative judgment on the limits on the Houses in these matters. First, committees rarely use their compulsive powers but rather rely on voluntary assistance and co-operation. Secondly, political realities, conventions and courtesies arising from the federal framework of the Constitution are likely to continue to inhibit the House and its committees from pressing

132 *Parliamentary committees: powers over and protection afforded to witnesses*, Paper prepared by I. J. Greenwood and R. J. Ellicott, PP 168 (1972) 6–7.

133 See also Enid Campbell, *Parliamentary privilege*, 2003, p. 154.

134 (1954) 90 CLR 177 at 182.

135 *Parliamentary committees: powers over and protection afforded to witnesses*, Paper prepared by I. J. Greenwood and R. J. Ellicott, PP 168 (1972) 9.

136 PP 168 (1972) 7.

137 Geoffrey Lindell, ‘Parliamentary committees and government witnesses’, *Melbourne University Law Review*, vol. 20, 1995, pp. 384–91, at 388.

hard for information on matters wholly, or even largely, within the constitutional jurisdiction of the States (*see* ‘Evidence from State public servants and State Members’ in the Chapter on ‘Committee inquiries’). Thirdly, the courts have been reluctant to intervene in the affairs of the Parliament, particularly with respect to parliamentary privilege and the Houses’ powers to investigate and deal with alleged contempt, which underpin the Houses’ powers to compel the giving of evidence. (However, punitive action under the *Parliamentary Privileges Act 1987* may involve a court of competent jurisdiction.)

### *Delegation of investigatory powers*

Without authority from the House a committee has no power to compel witnesses to give oral or documentary evidence. The power to call witnesses and require that documents be produced is now given to all House committees by standing order 236,<sup>138</sup> but may be limited by another standing order (as in the case of the Committee of Privileges and Members’ Interests) or by resolution.

Special provisions have sometimes been made. When first appointing the Joint Committee on Foreign Affairs in 1952, the Houses imposed an unusual qualification on the committee’s power to send for persons, papers and records in the resolution:

... the Committee shall have no power to send for persons, papers or records without the concurrence of the Minister for External Affairs and all evidence submitted to the Committee shall be regarded as confidential to the Committee . . .<sup>139</sup>

The Committee of Privileges and Members’ Interests has power to call for witnesses and documents, but when considering a matter concerning the registration or declaration of Members’ interests it must not exercise that power, or undertake an investigation of a person’s private interests, unless the action is approved by not less than six members of the committee other than the chair.<sup>140</sup> The Parliamentary Joint Committee on Intelligence and Security has, by virtue of the Act establishing the committee, some limitations in respect of the gathering and use of evidence.

A committee would have no authority to consider or use the evidence and records of a similar committee appointed in previous Parliaments or sessions without specific authority in a constituting Act or granted by the House. Standing authority in relation to House committees is now granted by standing order 237,<sup>141</sup> but previously was granted to committees on an individual basis by the sessional or standing orders or resolution of appointment.

A committee may only exercise compulsive powers in relation to the matters which the House has delegated to the committee to investigate by way of its terms of reference.

### *Powers of joint committees*

Doubts have been expressed as to whether joint committees are invested with the same powers, privileges and immunities as the committees of the individual Houses.<sup>142</sup> These doubts have been expressed because section 49 of the Constitution invests the two Houses and the committees of each House with the powers, privileges and immunities of

138 Prior to 3.12.1998 this power was granted to committees individually.

139 VP 1951–53/129 (17.10.1951). In later Parliaments the restrictions on the committee’s power to call for evidence were gradually eased, VP 1957–58/13–4 (20.3.1957); VP 1959–60/25–6 (25.2.1959); VP 1973–74/52–3 (15.3.1973). The powers of the modern Joint Standing Committee on Foreign Affairs, Defence and Trade are unqualified in this respect, VP 1998–2001/168 (3.12.1998).

140 S.O. 216(c).

141 Since 3.12.98.

142 *And see Odgers*, 14th edn, pp. 489–92; *but see also* Geoffrey Lindell, ‘Parliamentary inquiries and government witnesses’, *Melbourne University Law Review*, vol. 20, 1995, pp. 392–3, expressing the view that such doubts are not well founded.

the United Kingdom House of Commons and its committees at the time of Federation. No express mention is made of joint committees. If joint committees were not covered by section 49, the implications could have far-reaching and significant effects for those without relevant statutory provisions. However, it is relevant that section 3 of the *Parliamentary Privileges Act 1987* provides that, in the Act, ‘committee’ means a committee of a House or of both Houses (and subcommittees).

In response to a request by the Joint Committee on War Expenditure in 1941, the Solicitor-General advised that in his opinion absolute privilege attached to evidence given before a joint committee just as it did to evidence given before a select committee of one House. He also gave the opinion that a joint committee authorised to send for persons, papers and records had power to summon witnesses. He suggested that it was doubtful, however, whether a joint committee had the power to administer oaths to witnesses.<sup>143</sup>

### *Statutory secrecy provisions*

A number of provisions in Commonwealth Acts prohibit the disclosure of certain information and create criminal offences for disclosure in contravention of the provisions. Examples are to be found in the Income Tax Assessment Act and the Family Law Act. The application of such provisions could become an issue in respect of either House directly, but is more likely to arise in respect of committee inquiries, and did so in 1990 and 1991. Different views were expressed as to whether such provisions prevented the provision of such information to a committee, but in August 1991 the Solicitor-General advised as follows:

Although express words are not required, a sufficiently clear intention that the provision is a declaration under section 49 must be discernible. Accordingly, a general and almost unqualified prohibition on disclosure is, in my view, insufficient to embrace disclosure to Committees. The nature of section 49 requires something more specific.<sup>144</sup>

(The advice went on to state that certain provisions in the National Crime Authority Act which limited activities of the Joint Committee on the National Crime Authority were sufficient to fetter the otherwise wide powers of the committee.)

It is also to be noted that should information prohibited from disclosure under a general secrecy provision be disclosed in a submission received by a committee or in oral evidence to a committee, the law of parliamentary privilege would effectively block prosecution because the disclosure would have occurred as part of ‘proceedings in Parliament’.<sup>145</sup>

## SUBCOMMITTEES

Subcommittees may be appointed to:

- undertake ad hoc tasks such as taking evidence or conducting inspections on a particular day;
- investigate and report on a specified aspect of a broader inquiry; or
- conduct a full scale inquiry.

<sup>143</sup> Opinion of Solicitor-General, dated 8 August 1941.

<sup>144</sup> Opinion of Solicitor-General Griffith, 12 August 1991. This view was consistent with a joint opinion given in 1985 by the Attorney-General and the Solicitor-General, *but see* earlier opinion of Solicitor-General Griffith, 20 August 1990, and account of different views outlined in *Odgers*, 14th edn, pp. 68–73. In a 1984 report the House of Lords Committee of Privileges published an opinion by three Law Lords to the effect that general legislative provisions override previously existing parliamentary privileges (HL 254 (1984)). *And see* Geoffrey Lindell, ‘Parliamentary inquiries and government witnesses’, *Melbourne University Law Review*, vol. 20, 1995, pp. 408–9.

<sup>145</sup> *Parliamentary Privileges Act 1987*, s. 16.

A committee cannot delegate any of its powers or functions to a subcommittee unless so authorised by the House. Without this authority committees may only appoint subcommittees for purposes which do not constitute a delegation of authority, such as the drafting of reports.<sup>146</sup> Standing authorisation for committees of the House to appoint subcommittees is given by standing order 234, which provides that a committee may appoint subcommittees of three or more of its members and may refer to a subcommittee any matter which the committee may examine.<sup>147</sup> It is considered that a committee is responsible for the activities of its subcommittee(s) and that a subcommittee is accountable to its committee.

The chair of a subcommittee is appointed by its parent committee, and has a casting vote only. If the chair of a subcommittee is not present at a meeting of the subcommittee the members of the subcommittee present elect another member of the subcommittee to act as chair at that meeting. The quorum of a subcommittee is two members of the subcommittee.<sup>148</sup> Members of the committee who are not members of a subcommittee may participate in the public proceedings of the subcommittee but may not vote, move any motion or be counted for the purpose of a quorum.<sup>149</sup>

The following powers and authorisations granted to committees by the standing orders are also expressly granted to subcommittees:

- to call witnesses and require that documents be produced (S.O. 236);
- to consider and make use of the evidence and records of similar committees appointed during previous Parliaments (S.O. 237);
- to authorise publication of any evidence given before it or any document presented to it (S.O. 242(a));
- to conduct proceedings using approved means (S.O. 235(a));
- to conduct proceedings at any time or place as it sees fit, and whether or not the House is sitting (S.O. 235(c)).

Section 3 of the Parliamentary Privileges Act provides that, in the Act, a reference to a 'committee' includes a subcommittee.

A subcommittee is required to keep minutes of each meeting<sup>150</sup> and submit them with its report to the committee by which it was appointed. A subcommittee may not report directly to the House but only to its parent committee<sup>151</sup> which in turn reports to the House in terms of its reference. This requirement applies to matters which may arise in the course of an inquiry—for example, unauthorised disclosure of evidence or possible intimidation of a witness<sup>152</sup>—as well as to reports.

In general practice reports by subcommittees are prepared and considered in the same manner as committee reports. The chair of the subcommittee presents the report and minutes of the subcommittee to the full committee. If the report is for presentation in the House, the committee then considers the report, makes any amendments it requires and resolves that the report, as amended, be the report of the committee.

There is no provision for a protest or dissenting report to be added to a subcommittee report. Committee practice is that formal protest or dissent is recorded only at the

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146 *And see May*, 24th edn, p. 827.

147 Prior to 3.12.1998 such authorisation was granted to individual committees by standing order or resolution of appointment.

148 Because of the lower quorum requirement, a subcommittee is sometimes appointed temporarily to conduct a particular public hearing if it is expected that a quorum of members of the full committee will be unable to attend.

149 S.O. 234(d).

150 S.O. 239(a).

151 *And see May*, 24th edn, p. 828.

152 H.R. Deb. (9.1.2000) 22635–6.

committee consideration stage. A member of a subcommittee, or any other committee member, can disagree to a subcommittee report or portions of it when the committee is considering the matter and this will be recorded in the committee's minutes of proceedings.

In 1975 the Joint Committee on the Parliamentary Committee System presented a lengthy report of its subcommittee, in effect as an appendix to the committee's two-page report, without expressing any view on the subcommittee's conclusions and recommendations. The purpose was to seek comment on the report for the consideration of the full committee.<sup>153</sup> A member of the committee presented a dissenting report in which he stated:

It is my opinion, and I suspect that it is the opinion shared by many members of the Committee, that when a subcommittee is sent to perform a task it should not be obliged to report as an isolated unit; rather it should present its findings to its parent body, have them ratified and then present them to the Parliament.<sup>154</sup>

On other occasions, when inquiries have not been reported on at the dissolution of the House, in the new Parliament the opportunity has sometimes been taken for the new committee, or another appropriate committee, to have the inquiry completed by use of a subcommittee. It has been pointed out that while, for the purpose of enabling a report to go forward, a committee may adopt a subcommittee's report in such circumstances, the report does not necessarily convey the views of committee members who did not serve on the subcommittee.<sup>155</sup>

## MEETING PROCEDURES

The following sections describe procedures applying to committees of the House, although particular considerations applying to joint committees are also covered. It should be noted that, by convention, joint committees have followed established Senate committee practices and procedures to the extent that these differ from those of the House.<sup>156</sup> Senate committee procedures are outlined in *Odgers*. Procedures at committee hearings are covered in the Chapter on 'Committee inquiries'.

### First meeting

The first meeting cannot be held until the Members have been formally appointed by the House.<sup>157</sup> If it is left to a committee to elect its own chair, the committee secretary must call the first meeting. It is the secretary's responsibility to inform the members in writing of the time and place of the first meeting. If the chair is appointed, for example by the Prime Minister, it is technically the chair's responsibility to call the first meeting.

The first item on the agenda is the formal announcement by the committee secretary of the formation of a duly constituted committee and of its membership, and of the appointment of a chair in accordance with SO 232(a). If a chair has not been appointed, the committee secretary conducts the election of the chair, as described at page 660.

153 PP 275 (1975) xi.

154 PP 275 (1975) 95–7.

155 E.g. Standing Committee on Road Safety, *Passenger motor vehicle safety*, PP 156 (1976) xii. Standing Committee on Transport, Communications and Infrastructure, *Constructing and restructuring Australia's public infrastructure*, PP 284 (1987) x.

156 See page 648.

157 The Selection Committee was able to be constituted in the 43rd Parliament despite a vacancy in its membership, after the House suspended standing orders to provide for its first meeting, VP 2010–13/68 (30.9.2010)—and see page 660. In the following Parliament the equivalent motion enabled the initial business of the Selection Committee to be determined by the Speaker, Chief Government Whip and Chief Opposition Whip in the absence of a fully constituted committee, VP 2013–16/82 (14.11.13).

After the announcement of their appointment, or their election, the chair then assumes control of the meeting and may announce the appointment, or conduct the election, of the deputy chair if required. The remainder of the agenda is at the committee's discretion.

### **Time and place of meeting**

A committee or a subcommittee may conduct proceedings at any time or place as it sees fit, and whether or not the House is sitting.<sup>158</sup> Some committees have regular meeting times, but others may meet only as required by the work at hand. Formal notice of each meeting is issued by the committee secretary. The time and place of the next meeting is routinely included on the agenda for each meeting.

Committees normally adjourn to an agreed date or to a date to be fixed by the chair or presiding member. If the committee adjourns to a specific date, and a change in the date is subsequently found to be necessary, it is incumbent upon the chair to ensure that members are notified and given reasonable notice of the new date which is fixed by the chair. If a meeting is expected to be the committee's last, it adjourns 'sine die'.<sup>159</sup>

If there is disagreement within a committee concerning the appropriateness of adjourning at a particular time, the matter should be determined by resolution of the committee. However, in circumstances of grave disorder, the chair may suspend or adjourn the meeting without putting a question. These practices reflect those of the House itself.<sup>160</sup>

The following provisions of Senate standing order 30 for the convening of meetings apply to joint committees:

Notice of meetings subsequent to the first meeting shall be given by the secretary attending the committee (a) pursuant to resolution of the committee, (b) on instruction from the Chair or (c) upon a request by a quorum of members of the committee.

### **Meetings during sittings of the House**

A House committee may sit during any sittings of the House.<sup>161</sup> Committees of the House make much use of meetings during sittings of the House (although meetings may be interrupted from time to time by calls for divisions or quorums in the House).

### **Meetings of joint committees during sittings of the Senate**

Senate standing order 33, providing for circumstances in which Senate committees may meet during sittings of the Senate, also expressed to apply to joint committees, states:

- (1) A committee of the Senate and a joint committee of both Houses of the Parliament may meet during sittings of the Senate for the purpose of deliberating in private session, but shall not make a decision at such a meeting unless:
  - (a) all members of the committee are present; or
  - (b) a member appointed to the committee on the nomination of the Leader of the Government in the Senate and a member appointed to the committee on the nomination of the Leader of the Opposition in the Senate are present, and the decision is agreed to unanimously by the members present.
- (2) The restrictions on meetings of committees contained in paragraph (1) do not apply after the question for the adjournment of the Senate has been proposed by the President at the time provided on any day.
- (3) A committee shall not otherwise meet during sittings of the Senate except by order of the Senate.

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158 S.O. 235(c).

159 That is, without fixing a day for future action or meeting.

160 S.O. 95.

161 S.O. 235(c).

- (4) Proceedings of a committee at a meeting contrary to this standing order shall be void.
- (5) For the purpose of paragraph (3), a committee that seeks to meet contrary to this standing order may deliver a notice in writing to the Clerk, signed by the chair of the committee, setting out the particulars of the meeting proposed to be held. Immediately after prayers on any day, the Clerk shall read a list of such proposals and they shall be taken to be approved accordingly but, at the request of any senator, the question for authorisation of a particular meeting contrary to this standing order shall be put to the Senate for determination without amendment or debate.

Until 1987 the Senate imposed a general prohibition on committees meeting during its sittings (the view being held that the primary duty of Senators was to the plenary), although leave to sit during sittings of the Senate had been granted on motion.<sup>162</sup> The attitude was taken that leave was required only of the Senate because House of Representatives committees are permitted to meet during sittings of the House. Occasionally resolutions of appointment have authorised joint committees to sit during the sittings of either House of the Parliament.<sup>163</sup>

The Joint Committee of Public Accounts has reported on the issue of whether it was able to sit while the Senate was sitting, and maintained that it had a statutory right to meet contrary to the provisions of Senate standing orders and the wish of the Senate.<sup>164</sup> However, more recent practice has been for the committee to seek the permission of the Senate to take evidence while the Senate is sitting.<sup>165</sup>

### *Meetings outside Parliament House*

Standing order 235(c) provides standing authorisation for committees of the House to conduct proceedings ‘at any place’. Without such authorisation, in the past it was considered that a committee could only meet outside Parliament House, Canberra, by special order of the House. In 1968 two such orders had to be made by both Houses in relation to the Joint Committee on the Australian Capital Territory whose resolution of appointment did not contain this authorisation. Each motion passed by the Houses limited the authorisation to the committee’s current inquiry.<sup>166</sup> The committee’s resolution of appointment was amended soon afterwards to avoid the need for these cumbersome procedures.<sup>167</sup>

### *Meetings overseas*

On occasion committees or their subcommittees have been permitted to travel overseas in relation to their inquiries. The main principle to be considered, in relation to a committee travelling overseas, is that the House, and therefore its committees, has no jurisdiction outside Australia, and in visiting other countries a committee cannot formally meet or formally take evidence. Where approval has been given, it has been considered proper for members of a committee, as a group, to make inquiries and conduct informal discussions abroad and to have regard to the results of those inquiries and discussions, provided they do not purport to exercise the powers delegated by the House.

It would appear that provided a committee did not attempt to exercise its powers to administer oaths, compel the giving of evidence, and so on, it could sit as a committee

<sup>162</sup> E.g. J 1974–75/655 (14.5.1975).

<sup>163</sup> Joint Committee on Profits, VP 1940–43/158–9, 162 (3.7.1941); Joint Committee on Constitutional Review, VP 1956–57/168–9 (24.5.1956), 171 (29.5.1956) (the name of the committee was altered from Joint Committee on Constitutional Change *see* PP 50 (1957–58) 4).

<sup>164</sup> Reports 264 and 292 of the Joint Committee of Public Accounts, PP 75 (1987) and PP 317 (1988). *See also* reports of the Senate Standing Orders Committee, PP 117 (1983) and PP 169 (1987); and J 1987–90/1050 (1.11.1988).

<sup>165</sup> *See also Odgers*, 14th edn, pp. 527–9.

<sup>166</sup> VP 1968–69/44 (30.4.1968), 53 (2.5.1968), 329 (27.11.1968), 339 (28.11.1968).

<sup>167</sup> VP 1968–69/344 (25.2.1969), 356 (26.2.1969).



overseas and, with the consent of witnesses, have proceedings transcribed and published.<sup>168</sup> As proceedings would almost certainly not be privileged (in terms of the law of the country concerned), witnesses would need to be informed accordingly. In addition, committees would be unable to have orders enforced and to protect witnesses against intimidation or penalty. It would seem improper for a committee to sit, as a committee, in a foreign country without first seeking the consent of that country's government. Committees which are allowed to travel overseas are therefore more likely to conduct inspections and hold meetings and discussions of an informal nature.

Subject to the provision of funding,<sup>169</sup> the Speaker has supported travel to regional countries, such as New Zealand, Papua New Guinea, Indonesia and Thailand, and, with parliamentary funding, South America. These visits (apart from the annual committee visits as part of the Parliament's official overseas delegation program—*see below*) have been directly related to inquiries by the Joint Standing Committee on Foreign Affairs, Defence and Trade. Generally it has not been considered appropriate for other committees to travel internationally as part of an inquiry.<sup>170</sup>

As part of the Parliament's official overseas delegation program, there are three annual overseas committee visits: to New Zealand and the Pacific; to the People's Republic of China; and to two countries in Asia.<sup>171</sup> Each of the visits is undertaken by a House, Senate, or joint committee in rotation. In selecting committees regard is given to the reason for the travel and to how the committees' work would benefit.

In 2006 members of the Standing Committee on Procedure travelled together to various overseas Parliaments, using their individual study leave entitlements, to study developments in parliamentary practice and procedure.<sup>172</sup>

House committees have taken evidence in Australian external territories on several occasions, sometimes on oath.

### *Meetings by means of video or teleconference*

Committees are authorised to use electronic communication devices in order to take oral evidence from a witness who is not in attendance at a meeting of the committee, and to enable committee members not in attendance to participate in a public or private meeting. A quorum of members in one physical location is not necessary. Standing order 235(b) provides:

A committee may conduct proceedings using audio visual or audio links with members of the committee or witnesses not present in one place. If an audio visual or audio link is used, committee members and witnesses must be able to speak to and hear each other at the same time regardless of location. A committee may resolve for a subcommittee to use audio visual or audio links.

Teleconferences are regularly held for private meetings, especially for machinery matters or for report consideration. In 2010 the House suspended standing orders to enable the first meeting of the Selection Committee of the 43rd Parliament to be held by teleconference.<sup>173</sup>

168 *And see* Sir Barnett Cocks, 'Parliament goes abroad', *Parliamentarian*, LII, no. 1, 1971, p. 10. For UK House of Commons practice *see* *May*, 24th edn, pp. 815–6. *And see* *Odgers*, 6th edn, p. 756–7.

169 The Presiding Officers have the authority to approve overseas travel by members of parliamentary delegations under the Parliamentary Business Resources Regulations 2017, ss. 55–7.

170 However, in recent years several committees have taken evidence from witnesses in other countries by video or teleconference.

171 An overseas committee exchange with New Zealand has been an ongoing part of the delegations program for many years; in 2014 the Presiding Officers agreed to also include a visit to one other Pacific region country. The visit to countries in Asia has been in place since 2009 and the visit to China since 2011.

172 Standing Committee on Procedure, *Learning from other Parliaments—Study Program 2006*, pp 179 (2006).

173 VP 2010–13/68 (30.9.2010).

## Quorum

The proceedings of a committee which meets in public or in private without a quorum are invalid. Consequently, decisions taken are not binding and, more seriously, words spoken by members and witnesses are not assumed to be privileged. Any order by committee members has no legal authority in this circumstance.

In the absence of a quorum at the commencement of a meeting the following procedures provided for in the standing orders are followed:

If a quorum is not present within 15 minutes of the time appointed for the meeting of a committee, the members present may retire, and their names shall be entered in the minutes. The secretary of the committee shall then notify members of the next meeting.<sup>174</sup>

The reference to ‘entered in the minutes’ is in practice taken to mean the committee secretary’s rough minutes. If, after a committee has proceeded to business, the number of members present falls below a quorum, the chair must suspend the proceedings until a quorum is present or adjourn the committee.<sup>175</sup> This requirement is applied with common sense, and a meeting is not suspended if the quorum lapses when members leave the room for short periods. However, no vote can be taken during these periods.

The quorum of a committee of the House is three<sup>176</sup> (unless otherwise ordered). The standing orders are silent on the quorum for meetings at which a committee of the House confers (sits jointly) with a similar committee of the Senate. In the absence of any provision, the House and Publications Committees, when conferring, have fixed their quorums at five, provided that each House is represented in the quorum.

The quorum of a subcommittee of a House committee is two.<sup>177</sup>

### *Quorum—joint committees*

The House may set the quorum of its members required for a sitting of a joint committee. A joint committee may set its own quorum, subject to any requirement of the House<sup>178</sup> or statutory requirement. Normally the quorum is stated in the resolution of appointment and no specific provision is made as to the number of Senators or Members, respectively, required to form a quorum. The effect has been that a quorum may be maintained by Members of one House only. This has not prevented some joint committees, such as the Joint Committee on Publications, from maintaining an informal quorum arrangement where the committee agrees that it is not properly constituted unless there is at least one representative from each House.

Quorum requirements may vary between committees and for the same committee in different Parliaments. In the 37th Parliament the Joint Standing Committee on Foreign Affairs, Defence and Trade, with 32 members, had a quorum requirement of 10, while the joint standing committees on Electoral Matters and Migration, each with a membership of 10, had quorum requirements of four.<sup>179</sup> In later Parliaments these committees, with the same number of members as before, had quorum requirements of six, three and three, respectively. In the later Parliaments the quorum provisions also included a requirement for the presence of one government and one non-government

174 S.O. 233(b).

175 S.O. 233(a).

176 S.O. 233(a).

177 S.O. 234(c).

178 S.O. 225. The Senate could also set such a requirement by resolution or by standing order. The last occasion the Houses fixed the quorum of their respective Members was for the Joint Select Committee of Public Accounts for which the quorum included at least one Member of each House, VP 1932–34/118–9 (11.3.1932); J 1932–34/45, 46 (11.3.1932); *see also* Joint Select Committee on the Moving-Picture Industry, VP 1926–28/294 (3.3.1927), 303 (11.3.1927).

179 VP 1993–96/81–3 (13.5.1993).

member (from either House) at deliberative meetings.<sup>180</sup> The resolution of appointment of the Joint Standing Committee on the New Parliament House provided that five members of the committee, one of whom was either the Speaker or the President, constituted a quorum of the committee.<sup>181</sup> The Joint Standing Committee on the National Capital and External Territories has had a quorum of three, one of whom must be the Deputy Speaker or the Deputy President when matters affecting the parliamentary zone are under consideration.<sup>182</sup>

Senate practice is that a committee meeting may continue without reference to the number of members present until a committee member draws attention to the lack of a quorum, in which case the proceedings are suspended until a quorum is present. If a quorum is not present after 15 minutes the meeting must be adjourned.<sup>183</sup>

### Motions and voting

The standing orders are silent on the moving of motions and amendments and voting in committees, except to state that the chair has a casting vote only<sup>184</sup> and to provide for voting during the consideration of draft reports.<sup>185</sup> However, committees have regard to the practice of the House where this is applicable to their proceedings; for example, the same motion rule has been applied.<sup>186</sup>

Following the procedure of the former committee of the whole, motions and amendments do not require a seconder. The one exception is the nomination of a member for election as chair (*see* page 660). As well as amendments being moved, an amendment may be moved to an amendment.<sup>187</sup> As in the House, a division is not proceeded with unless more than one member has called for a division. In such instances the member may inform the chair that the member wishes his or her dissent to be recorded in the minutes. This request is automatically granted.<sup>188</sup>

Questions are determined by a majority of votes. As in the House, pairing arrangements have operated.<sup>189</sup> The chair of a House of Representatives committee exercises a casting vote only.<sup>190</sup> Supplementary members may not vote.<sup>191</sup>

### Voting—joint committees

The voting rights of chairs of joint committees can vary. It is common to include in the resolution of appointment of joint committees the provision that ‘In the event of an equality in voting, the chair, or the deputy chair when acting as chair, shall have a casting vote’.<sup>192</sup> This is in effect a second vote which is in addition to the chair’s deliberative vote. If special provisions are not made for a casting vote, the chair of a joint committee

180 E.g. VP 1996–98/227–35 (30.5.1996); VP 1998–2001/164–74 (3.12.1998).

181 VP 1987–90/39–40 (17.9.1987).

182 VP 2013–16/117–8 (21.11.2013).

183 Senate S.O. 29(2).

184 S.O. 232(a). For example of chair’s casting vote being used *see* Selection Committee, minutes, 1.6.2011. In the 43rd Parliament, in exercising a casting vote the Selection Committee chair (the Speaker) was guided by the principles followed by the Speaker in exercising a casting vote in the House. However, this committee is a special case because of its relationship with proceedings in the House, and other committee chairs have not necessarily felt so constrained.

185 S.O. 244(d).

186 E.g. Selection Committee, minutes, 1.6.2011. In this instance the chair (the Speaker) ruled that a proposal in the same terms as one negatived the previous week was not in order as it contravened standing order 114.

187 E.g. Committee of Privileges, minutes, 21.12.1993, PP 78 (1994).

188 S.O. 126.

189 E.g. Selection Committee, minutes, 1.6.2011.

190 S.O. 232(a). For an exception *see* Select Committee on Aircraft Noise where the chair had a deliberative vote and, in the event of an equality of votes, also had a casting vote, VP 1969–70/15–7 (25.11.1969).

191 S.O. 215(d).

192 VP 1996–98/126–35 (21.5.1996); VP 1998–2001/171 (3.12.1998).

has a deliberative vote only in accordance with Senate standing orders.<sup>193</sup> Thus, when the votes are equal the question will pass in the negative. This rule is applied to the relatively few joint committees whose resolutions of appointment do not determine the chair's voting powers.<sup>194</sup> The resolution of appointment of the Joint Committee on Foreign Affairs, Defence and Trade in the 37th Parliament did not have a provision covering an equality of voting, hence the provision in the Senate standing order applied.<sup>195</sup>

The Joint Standing Committee on the New Parliament House had joint chairs. Its resolution of appointment provided that in matters of procedure, each of the chairs, whether or not occupying the chair, had a deliberative vote and, in the event of an equality of voting, the chair occupying the chair had a casting vote. In other matters, each of the chairs, whether or not occupying the chair, had a deliberative vote only.<sup>196</sup>

### Minutes of proceedings

The minutes of a committee record the names of members attending each meeting, every motion or amendment moved in the committee and the name of the mover, and the names of members voting in a division, indicating on which side of the question they have each voted. The minutes also record the time, date and place of each meeting, the names of any witnesses examined, the documents formally received and any action taken in relation to them, and the time, date and place of the next proposed meeting. The attendance of specialist advisers may also be recorded.

As far as possible the style of committee minutes conforms to the style of the Votes and Proceedings of the House. They do not summarise deliberations but record matters of fact and any resolutions resulting from the committee's deliberations.

The chair confirms the minutes of a preceding meeting by signing them after the committee has adopted them and agreed to any necessary amendments. The committee secretary may certify as correct the unconfirmed minutes of a committee's final meeting.

Minutes are required to be presented to the House with the relevant report.<sup>197</sup> If a committee is conducting more than one inquiry, extracts from its minutes relating only to the inquiry on which it is reporting should be presented.

If the minutes show disagreement or division on the content of a report, there are advantages in having them printed as an appendix to the report. Publication of minutes is one method of drawing attention to dissent, and may overcome the need for a separate dissenting report. Some reports by the Committee of Privileges and the report by the Select Committee on Pharmaceutical Benefits have exemplified this approach.<sup>198</sup>

Minutes, like all documents presented to the House, are authorised for publication once they are presented.<sup>199</sup> Transcripts of evidence and copies of submissions presented with the minutes are subject to the same provisions. Therefore a committee should not present evidence which it does not want to be made public.

193 Senate S.O. 31.

194 Joint Committee on the Australian Capital Territory, VP 1980–83/54–5 (3.12.1980), 69 (4.12.1980).

195 VP 1993–96/82 (13.5.1993). In later Parliaments the resolution did so provide, e.g. VP 1996–98/127 (21.5.1996); VP 1998–2001/167 (3.12.1998); VP 2010–13/51 (29.9.2010); VP 2013–16/115 (21.11.2013).

196 VP 1987–90/39–40 (17.9.1987).

197 S.O. 247(a).

198 Select Committee on Pharmaceutical Benefits, *Report*, PP 73 (1972).

199 S.O. 203. See Ch. on 'Documents'.

## Presence at meetings of Members who are not members of the committee

Other Members, who are not members of the committee, may be present when a committee or subcommittee is examining a witness, or gathering information in other proceedings. Other Members must leave when the committee or subcommittee is deliberating or hearing witnesses in private, or if the committee or subcommittee resolves that they leave.<sup>200</sup> When present at a hearing the Member cannot put questions to witnesses or take any other part in the formal proceedings unless authorised by a resolution of the committee. These restrictions can also be removed by a provision in the committee's resolution of appointment or by special order of the House. The relevant Senate standing order relating to its legislative and general purpose standing committees allows Senators to be nominated as 'participating members' of committees, although while such members have all the rights of committee members and may participate in the hearing of evidence and deliberations, they may not vote on any question before the committee.<sup>201</sup> Resolutions of appointment of joint committees have also provided for participating members.<sup>202</sup>

A Senator appointed to the Joint Committee of Public Accounts and Audit with effect from a future date, was permitted by resolution of the committee to attend and participate in a public hearing held prior to the effective date of his appointment, but not counted for a quorum or vote.<sup>203</sup>

Standing order 215(d) allows a general purpose standing committee to be supplemented by up to four additional members for a particular inquiry, with a maximum of two extra government members and two extra opposition or non-aligned members. The supplementary members have the same participatory rights as other members but may not vote. In addition, when a committee is considering a bill referred to it under the provisions of standing order 143, one or more members of the committee may be replaced by other Members.<sup>204</sup> In this case, however, the Members in question become full members of the committees for the purposes of those inquiries, and are not to be regarded as 'observers' or 'participating Members'.

## Visitors

Standing order 240 provides:

- (a) A committee or subcommittee may admit visitors when it is examining a witness or gathering information in other proceedings.
- (b) All visitors must leave if:
  - (i) the Chair asks them to;
  - (ii) the committee or subcommittee resolves that they leave; or
  - (iii) the committee or subcommittee is deliberating or hearing witnesses in private.

Committee members' personal staff are regarded as visitors for the purposes of this standing order and are not entitled to attend private meetings of a committee. In 1976 the Speaker wrote to all chairs of committees discouraging the attendance of members' staff at other than public meetings of a committee or at committee inspections. The Speaker indicated that the provisions of the standing orders concerning the confidentiality of committee proceedings meant that no person, other than a member of a committee or an

200 S.O. 241.

201 Senate S.O. 25(7) (a)–(c).

202 E.g. VP 2010–13/52 (29.9.2010), 372 1.3.2011), 496–7 (11.5.2011). First Member of the House so appointed, VP 2010–13/481 (10.5.2011).

203 Senator Feeney appointed with effect from 26 August 2008; public hearing 21–22 August.

204 S.O. 229(c).

employee of the House, could be involved in committee proceedings which are not open to the public. Although a nominated member of the personal staff of a committee chair may be entitled to receive travel allowance to accompany the chair on committee business, this does not empower the staff member to attend any but public meetings of the committee.

In the 44th Parliament the House Liaison Committee of Chairs and Deputy Chairs resolved to support a practice whereby non-members do not attend private committee meetings, and briefings and inspections, unless they are expressly invited witnesses or experts directly assisting the committee with its work. The Liaison Committee also required a resolution by a committee if it was necessary for non-members to attend a private committee meeting.

Senate standing order 36, which is relevant to joint committees, states that persons other than members and officers of a committee may attend a public meeting of a committee, but such persons shall not attend a private meeting except by express invitation of the committee and they must be excluded when the committee is deliberating.

## Disorder

Disorderly or disrespectful conduct by visitors, including witnesses, during a public or private meeting of a committee may be considered a contempt (*but see* Chapter on ‘Parliamentary privilege’). In this regard a Member who is not a member of the committee is on the same footing as a visitor. Examples of disorderly or disrespectful conduct could include: interrupting or disturbing committee proceedings; displaying banners or placards in the room or otherwise drawing attention away from formal proceedings; remaining after visitors have been ordered to leave; appearing before a committee in a state of intoxication; or using offensive language before a committee.<sup>205</sup>

The manner in which a committee chooses to deal with disorderly behaviour will obviously depend upon the circumstances. If a simple direction is insufficient to restore order, the committee may order visitors to leave or suspend its proceedings. The assistance of the Serjeant-at-Arms and staff from the Serjeant-at-Arms’ office may have to be sought. On occasion the Serjeant-at-Arms has arranged for police to maintain security. If the committee is meeting outside Parliament House, it may have to adjourn its proceedings.

At a public hearing on 3 December 1981, the proceedings of the Public Works Committee were continually interrupted by interjections by members of the public attending the meeting. The chair made a plea to those persons interjecting to indicate in writing the opinions they wished to express and then suspended the meeting for lunch. During the lunch break the chair gave a radio interview where he indicated that if the interjections continued the meeting would continue in private. There were few interjections at the resumed meeting.

A committee may not punish a person considered guilty of contempt; it may only draw the circumstances to the attention of the House by special report or a statement by the chair. The House may then deal with the matter as it thinks fit.<sup>206</sup>

<sup>205</sup> *And see May*, 24th edn, pp. 251–2.

<sup>206</sup> *And see* p. 604 of the second edition for details of a case referred by the UK House of Commons to its Committee of Privileges.

## Confidentiality of committee records

The confidentiality made possible by a committee's power to meet in private is bolstered by the provision in the standing orders that a committee's or subcommittee's evidence, documents, proceedings and reports may not be disclosed or published to a person (other than a member of the committee or parliamentary employee assigned to the committee) unless they have been reported to the House; or authorised by the House, the committee or the subcommittee.<sup>207</sup> This provision covers private committee deliberations, the minutes which record them and committee files. Any unauthorised breach of this confidentiality may be dealt with by the House as a contempt.<sup>208</sup>

The files and other records of a committee are confidential to it and may be made available to others only by order of the committee, or of the House itself or, in the limited circumstances noted below, by authority of the Speaker. Standing order 237 provides that a committee or a subcommittee may consider and make use of the evidence and records of similar committees appointed during previous Parliaments.

The Speaker has the authority to permit any person to examine and copy committee documents which have not already been published by the House or its committees and which have been in the custody of the House for at least 10 years. A 30 year rule applies to confidential documents or private evidence.<sup>209</sup>

## COMMITTEE ADMINISTRATION — STAFF AND ADVISERS

Committee secretariats have four basic functions:

- advising on committee procedure and practice;
- providing administrative and clerical support;
- undertaking research and analytical work related to the terms of reference and content of particular inquiries, and
- preparing an initial draft of the chair's report.<sup>210</sup>

The Department of the House of Representatives provides secretariats for committees of the House, and some joint committees. The standing committees concerned with domestic or internal matters are usually staffed on a part-time basis by staff with other duties.

Under the Parliamentary Services Act the Clerk of the House has the duties and powers of an employer in relation to departmental employees. Within the framework set by the Act committees are supported by small groups of employees. The detailed arrangements for secretariat support provided to investigatory committees serviced by the Department vary. A typical arrangement might comprise a committee secretary, perhaps two or more project/research officers (depending on the number of committees to be supported) and one or more support staff. Committee secretariats are usually required to support more than one committee. Allocation of additional staffing depends on the availability of funds and personnel, each committee's terms of reference, the number of inquiries a committee is conducting, the nature of its operations, its reporting targets and the incidence of subcommittee operations.

207 S.O. 242(b) and see also the *Parliamentary Privileges Act 1987*, s. 13. S.O. 242(b) and resolutions of appointment authorise committees to publish any evidence given before them and any document presented to them.

208 Subject to the provisions of the *Parliamentary Privileges Act 1987*. (See also Ch. on 'Parliamentary privilege', and see *May*, 24th edn, pp. 259–60.)

209 Resolution of 11 October 1984, VP 1983–84/988–9 (11.10.1984). (See 'Disclosure of private or in camera evidence' in Chapter on 'Committee inquiries'.)

210 S.O. 244(a).

Committees may be assisted by specialist advisers who are remunerated at agreed rates and receive reimbursement for travelling and incidental expenses. Most specialist advisers are engaged only for the duration of a particular inquiry or even to perform a specific task of limited scope and they normally work on a part-time basis as required. Proposals to engage and pay expert advisers must be submitted to a House employee authorised to approve such expenditure, who may approve them subject to the availability of funds. Many committees have employed expert advisers from time to time. Staff from the public service or the defence force may also be seconded to the Department on a full-time or part-time basis to provide specialist advice to committees and this form of support is frequently utilised.

In 1984 the Senate Select Committee on the Conduct of a Judge and Senate Select Committee on Allegations Concerning a Judge appointed legal counsel to advise them. In the latter case the resolution of appointment provided that two Commissioners Assisting the Committee be appointed by resolution of the Senate. Each Commissioner was a recently retired Supreme Court judge.<sup>211</sup>

### General principles for the administration of parliamentary committees

In June 2007 the Speaker presented to the House *General principles for the administration of parliamentary committees* which had been endorsed by the Liaison Committee of Committee Chairs and Deputy Chairs. The Liaison Committee amended the principles in June 2014 to include the responsibilities of committee members. The principles are as follows:

#### **General principles for the administration of parliamentary committees**

Parliamentary committees are established under the authority of one or both Houses of the Parliament. They may be established by resolution, under a standing order or by statute.

#### **Role and responsibilities of committees**

Committees are appointed to carry out certain functions of the House. Their powers derive from those of the House and the House has implemented a set of rules (standing orders) to govern the way in which committees must operate. It is incumbent upon each committee to ensure that it operates in accordance with the standing orders and any other instructions from the House.

The committee's prime duty is to report the results of its activities to the House, or both Houses in the case of a joint committee. In order to enhance flexibility and efficiency the House has delegated to the Speaker the power to receive and authorise publication of committee reports when the House is not sitting (SO 247). A committee should take into account any views expressed by the Speaker when considering whether to exercise this option instead of reporting first to the House.

Within the standing orders committees have flexibility to manage their work as best suits the committee. It is the responsibility of the committee as a whole to agree on priorities, work programs and the direction and management of the conduct of inquiries.

The committee is required by the House to elect a chair and a deputy chair to assist it to manage its business effectively.

#### **Support provided to committees**

The Department of the House of Representatives is responsible for providing resources and services to support the operations of the House and its committees. A portion of the funds appropriated for the House of Representatives is allocated by the Clerk of the House to each committee on an annual basis to enable it to carry out its agreed program of work. Staff of the department are allocated by the Clerk to work with the committee to assist it in achieving its objectives.

Staff are employed under the Parliamentary Service Act. The department, through its managers, is responsible for the welfare of its staff, ensuring that conditions of service and legal obligations to staff are met and that staff uphold the parliamentary service values and code of conduct and meet service standards.

211 Senate Select Committee on the Conduct of a Judge, *Report to the Senate*, PP 168 (1984); Senate Select Committee on Allegations Concerning a Judge, *Report to the Senate*, PP 279 (1984).



The chair, deputy chair and secretariat staff work in partnership with each other and the committee to achieve the best outcomes for the committee. The responsibilities of each to achieve this goal are set out below.

***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 House or the Parliament 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 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;
- 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 of the committee.

***Responsibilities of the deputy chair—***

- assist the chair in achieving committee effectiveness;
- in the absence of the chair, conduct proceedings in an orderly and fair manner;
- assist the chair with administrative action when called upon;
- canvass the views of, and represent, non-government members of the committee when requested to do so by the committee, the chair or the non-government members of the committee. Liaise, as necessary, with the chair and the secretary to assist effective decision making and coordination of committee activities.

***Responsibilities of the members—***

- support the chair and deputy chair in achieving committee effectiveness;
- understand the role of parliamentary committees and be prepared for committee meetings by reading papers beforehand;
- contribute to the formation of a committee view on matters relevant to an enquiry;
- provide a quorum to enable the committee to hold a properly constituted meeting in Canberra and elsewhere;
- treat witnesses with respect and courtesy at all times;
- understand their obligations in relation to parliamentary privilege;
- understand the obligations of the secretariat to the committee as a whole, and
- ensure the security of committee documents in their possession, especially draft reports.

***Responsibilities of the secretary—***

- provide impartial, non-partisan advice and support services to the committee. The secretary must provide advice and services to assist the committee as a whole and not so as to favour an individual member or members of the committee;
- consult appropriately and as necessary with senior staff of the Department of the House of Representatives or written authorities to ensure the highest quality of advice is available to the committee;
- provide equal and timely access to evidence, correspondence and information provided to, or commissioned by, the committee to all committee members;
- manage resources responsibly to enable the committee to carry out its functions effectively. Provide advice to the committee on the availability of resources to meet its proposed work plan;

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- uphold the parliamentary service values and code of conduct;
- with the support of the senior managers of the Department of the House of Representatives, uphold the department's obligations to its staff and ensure their welfare.