

# HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON PRIVILEGES

## REVIEW OF PROCEDURES APPLYING TO ALLEGED BREACHES OF PARLIAMENTARY PRIVILEGE

### COMPARATIVE ANALYSIS

#### Question 1a: Form of legislative provision

State	Form of legislative provision – procedures regarding the consideration and determination by your House, relevant committee or other relevant authority of any alleged breaches of parliamentary privilege
House	<ul style="list-style-type: none"> <li>▪ Experience and case law with practice recorded in <i>House Reps Practice</i>, 5<sup>th</sup> ed, Chp 19 &amp; App 25, pp 707-754 &amp; 840-881</li> <li>▪ The practice is in many respects similar to that of the Senate</li> <li>▪ Committee of Privileges</li> </ul>
Senate	<ul style="list-style-type: none"> <li>▪ Resolutions of privilege agreed by Senate 25 February 1988</li> <li>▪ Senate Committee of Privileges</li> </ul>
Victorian Legislative Assembly	<ul style="list-style-type: none"> <li>▪ Section 19 of the <i>Victorian Constitution Act 1975</i> (Privilege powers etc of Council and Assembly)</li> <li>▪ Section 27 of the <i>Victorian Defamation Act 2005</i> (Defence of absolute privilege)</li> <li>▪ Section 50 of the <i>Victorian Parliamentary Committees Act 2003</i> (Immunity from judicial review)</li> <li>▪ Rulings from the Chair</li> <li>▪ Privileges Committee</li> </ul> <p>(sub pages 1-2)</p>
Tasmanian Legislative Council	<ul style="list-style-type: none"> <li>▪ <i>Parliamentary Privilege Act 1858</i> (Att A)</li> <li>▪ SO 170 (Att B) - Legislative Council Committee of Privileges (established for each parliament)</li> </ul>
New South Wales Legislative Assembly	<ul style="list-style-type: none"> <li>▪ Historically privilege matters dealt with on the floor of the House.</li> <li>▪ Since December 2003 members can only raise a matter of privilege suddenly arising relating to proceedings that are before the House.</li> <li>▪ Matters of privilege that are suddenly arising are dealt with in accordance with the standing orders. SO 88 provides that a member may interrupt another member in order to raise a matter of privilege “suddenly arising”. The member may then, under the provisions of SO101 address the House for up to 10 minutes in order to satisfy the Speaker that:               <ul style="list-style-type: none"> <li>➤ The matter is one suddenly arising and should be dealt with at the earliest opportunity;</li> <li>➤ That there is a prima facie case; and</li> <li>➤ That the member has a prepared notice.</li> </ul> </li> </ul>

	<p>If so satisfied, the Speaker will rule that the matter should proceed forthwith or have precedence of other business on the next sitting day. Such motions are accorded precedence under SO 127.</p> <ul style="list-style-type: none"> <li>▪ Other matters of privilege that members wish to raise must be done in accordance with the resolution of the House that was first agreed to in December 2003. The resolution provides that a matter of privilege shall be brought before the House in a certain way (see Sub p 1)</li> <li>▪ Privileges &amp; Ethics Committee</li> </ul> <p>(sub pages 1-2)</p>
House of Commons UK	<ul style="list-style-type: none"> <li>▪ Procedures of raising complaints follows 1978 House approved recommendations made by Committee of Privileges in its <i>Third report Recommendations of the Select Committee on Parliamentary Privilege</i></li> <li>▪ Committee on Standards and Privileges established under SO 149 (Annex A)</li> <li>▪ Bill of Rights 1689</li> <li>▪ Joint Committee on Parliamentary Privilege, 1999, <i>Report</i> (addresses the issue of parliamentary privilege and many of the specific matters addressed in this review)</li> </ul> <p>(sub unpagged therefore no page numbers cited – sections clearly labelled.)</p>
ACT Legislative Assembly	<p>Section 24 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> addresses powers, privileges and immunities of Assembly. Until the Assembly makes its own law, the Assembly, its members and committees have the same powers as the House of Representatives, its members and committees with the exception of the powers to imprison or fine a person which the Assembly does not have. Therefore Assembly relies on Commonwealth <i>Parliamentary Privileges Act 1987</i> and SO 71 of the Assembly sets out the rules in relation to privilege matters raised in the Assembly. (sub pages 1-2)</p>
Canadian House of Commons	<p>SO 48 (see page 6). Specifies that whenever matter of privilege arises it shall be taken into consideration immediately and unless notice of motion given under SO 54, any member proposing to raise a question of privilege, other than arising out of the proceedings in the Chamber during the course of a sitting, shall give the Speaker a written statement of the question at least one hour prior to raising the question in the House. (see sub pp 6-12)</p>
Victorian Legislative Council	<ul style="list-style-type: none"> <li>▪ Chapter 19 of the standing orders deals with matters of privilege and right of reply</li> <li>▪ SO 19.01 outlines the process for dealing with an alleged breach of privilege. The process requires written notice to be given to the President as soon as possible. If the matter arises from a published statement, a copy of the statement is to be provided to the President at this time also. The President then determines whether the matter merits precedence over other business and, if so, advises the Council accordingly.</li> <li>▪ The Legislative Council has a Privileges Committee which may conduct inquiries into, and report upon, any alleged breaches of parliamentary privilege referred to it by resolution of the House. This Committee meets as required. The Committee was first established in 1990 but has not yet been required to meet.</li> </ul> <p>(sub page 1)</p>

House of Assembly SA	<ul style="list-style-type: none"> <li>▪ Presently no active, specific legislation in SA in relation to parliamentary privilege.</li> <li>▪ <i>Constitution Act 1934</i> restricts the SA Parliament to not exceeding the powers etc of the House of Commons as at 24 October 1856 which was the date of the enactment of the Constitution Act on the attainment of responsible government.</li> <li>▪ As the majority of privileges of the House of Commons are enjoyed by common law or custom, it is not easy to determine with certainty what privileges were enjoyed in 1856.</li> </ul> <p>(see sub page 1)</p>
New Zealand House of Representatives	<ul style="list-style-type: none"> <li>▪ <i>New Zealand Bill of Rights Act 1990</i> section 27(1)</li> <li>▪ Section 242 <i>Legislature Act 1908</i> gives effect in New Zealand law to parliamentary powers operating in the UK at the time the act was passed.</li> <li>▪ Standing Orders apply</li> <li>▪ See publication <i>Natural justice before Select Committees</i></li> </ul>
WA Legislative Council	<ul style="list-style-type: none"> <li>▪ <i>Parliamentary Privileges Act 1891</i> sections 5,6,7,8, 10, 14-15</li> <li>▪ <i>Parliamentary Papers Act 1891</i></li> <li>▪ Part II, Chapter VIII, <i>The Criminal Code</i> – establishes offences relating to parliamentary proceedings (sections 54-61)</li> <li>▪ Section 58C, <i>Financial Administration and Audit Act 1985</i></li> <li>▪ SO 122, 134, 155, 329-331</li> </ul> <p>(See sub pages 1-2 and copies of the above documents attached)</p>

### Question 1b: Scope of procedures: (i)

State	i. <u>Safeguards provided for ensuring the observance of the rules of natural justice and procedural fairness in relation to persons who are alleged to have breached parliamentary privilege</u> and other witnesses when appearing before the House and parliamentary committees charged with the determination of such allegations
House	General procedures for the conduct of proceedings of the Privileges Committee set out in Procedure Committee report <i>It's your House</i> App A (Att 2)
Senate	Resolution 25/2/88 point 5 (Att 1)
Victorian legislative Assembly	The Privileges Committee operates under the procedures set out for select committees in Standing Orders. There are no other special arrangements. (sub pages 2-3)
Tasmanian Legislative Council	Witnesses provided with relevant information on privilege procedures for committee hearings (see copy Att C). Witnesses are advised that 'Committee proceedings are accorded the same protection as proceedings in the Parliament itself. This means that no legal action can be taken against you by third parties in relation to the evidence given during a hearing. This immunity does not apply if, after the hearing, you repeat statements made in evidence.
New South Wales Legislative Assembly	<ul style="list-style-type: none"> <li>▪ No specific procedures adopted by House or its committees, including Privileges and Ethics Committee, on how they will ensure that witnesses before a committee are afforded <u>natural justice</u>.</li> <li>▪ Not mandatory under legislation for a committee to afford a person natural justice, however committees, esp those established by legislation, would be advised to err on the side of caution given decision of the High Court in <i>Annetts v McCann</i> (1990) 170 CLR 596, which emphasised that where a statute confers on a person a power or authority to make decisions or "finding" in an inquiry which may affect an individual's rights, interest, or reputation, the rules of natural justice regulate the exercise of that power.</li> </ul> (sub page 2)
House of Commons UK	Except where an offence is committed in full view of the House or, on occasion, where the offence committed in view of a committee is reported by that committee, the House, or the committee to which the complaint has been referred, will not punish the offence without hearing from the party involved.
ACT Legislative Assembly	SO 261 states: All witnesses examined before the Assembly or any of its committees, are entitled to the protection of the Assembly in respect of anything that may be said by them in their evidence. Witnesses are advised of this at the commencement of hearings. (sub pages 2-3)
Canadian House of Commons	Given that neither the House of Commons, nor any of its committees, are courts, the general rules of procedure and evidence recognized by the courts and administrative tribunals do not form part of the procedures of the House or its committees. Inquiries of the House and its committees are parliamentary in nature, not judicial. (sub page 3)

Victorian Legislative Council	None specifically stated in submission
House of Assembly SA	<ul style="list-style-type: none"> <li>▪ No legislative basis for the protection of witnesses that appear before either House or a committee of either House. Those that exist are in SO (chapter 28) and in practices of the House (based on Erskine May).</li> <li>▪ There are no written safeguards for the SA Parliament to ensure the observance of the rules of natural justice and procedural fairness to persons who are alleged to have breached parliamentary privilege and other witnesses appearing before the House or its committees.</li> <li>▪ Doubtful whether a Select Committee is under any enforceable duty to accord natural justice to witnesses. House received a copy of advice to the effect that recent developments in the area of administrative law concerning the principles of procedural fairness may be extended to the exercise of certain parliamentary functions and it is doubtful that such duties would be enforceable. ‘Accordingly, any duties to act fairly may not be justiciable, and may be termed duties of imperfect obligation.’</li> <li>▪ The House controls and observes that the rules of natural justice and procedural fairness have been adhered to through the composition of the privilege committee, debate in the House and under SO.</li> </ul> <p>(see sub page 3)</p>
New Zealand House of Representatives	<ul style="list-style-type: none"> <li>▪ Section 27(1) of the <i>New Zealand Bill of Rights Act 1990</i> applies.</li> <li>▪ Principles of natural justice applied to select committee procedure by providing opportunities for people to respond to allegations made about them at a committee and for a fair process to be followed when evidence is given. Provision has been made for the disqualification of a member for a particular item of business if that member has displayed clear bias against a person in respect of criminal activity under investigation by the committee. (<i>Natural justice before Select Committees</i> page 5)</li> <li>▪ Natural justice procedures ensure that in the absence of recourse in the courts, if serious allegations are made about you that may seriously damage your reputation, you have the opportunity to put your side. (<i>Natural justice before Select Committees</i> page 9)</li> </ul>
WA Legislative Council	<ul style="list-style-type: none"> <li>▪ SO 330-331 set out entitlements of witnesses before Legislative Council standing committees (sub pages 6-7)</li> <li>▪ Committees are bound by SO 330 (evidence of public servants – not being asked policy questions and not having to answer them if asked) unless the House or committee determines otherwise. States SO 330 must also be read subject to the <i>Parliamentary Privileges Act 1891</i> and the common law privileges. These limit the scope and understanding of the SO.</li> </ul>

## Question 1b cont: Scope of procedures: (ii)

State	ii. Other protection accorded to <u>witnesses who appear before the House and the Privileges and other parliamentary committees</u> , and whether they enjoy the same privileges & immunities as those enjoyed by witnesses in ordinary legal proceedings such as legal professional privilege & privilege against self-incrimination
House	<ul style="list-style-type: none"> <li>▪ No House resolution but House Procedure Committee recommended House adopt similar procedures to those adopted by Senate. No such procedures formally adopted. Generally House committees follow those procedures</li> <li>▪ No House resolution but House Privileges Committee agreed to follow similar procedures to Senate with some differences related to: no provision for person to attend hearing where adverse evidence is being given against them; being able to have an accompanying adviser (rather than counsel) although the adviser could be legal adviser; committees to take evidence in public hearing unless particular reason for taking it in private; no provision for committee to appoint counsel and have counsel cross-examine witnesses</li> </ul>
Senate	<ul style="list-style-type: none"> <li>▪ Procedures for protection of witnesses set out in Senate resolution of 25/2/88 point 1 (Att 1).</li> <li>▪ Procedures for protection of witnesses before Privileges Committee set out in same Senate resolution of 25/2/88 point 2 (Att 1).</li> </ul>
Victorian Legislative Assembly	The Privileges Committee operates under the procedures set out for select committees in our Standing Orders. There are no other special arrangements.
Tasmanian Legislative Council	Witnesses provided with relevant information on privilege procedures for committee hearings (see copy Att C). Includes statement that if you believe that to answer a question from the Committee may tend to incriminate you, you may apply to the Committee to be heard in private session.
New South Wales Legislative Assembly	<ul style="list-style-type: none"> <li>▪ Witnesses for Privileges &amp; Ethics Committee afforded same protections as any witness appearing before parliamentary committee.</li> <li>▪ Protection from defamation liability by <i>Parliamentary Evidence Act 1901</i> (NSW) s. 12 and <i>Defamation Act 2005</i> (NSW) s. 27(2)(a) – defence of absolute privilege for the publication of defamatory matter published in the course of proceedings of parliamentary body</li> <li>▪ <i>Evidence Act 1995</i> s. 127 allows witness to refuse to answer question on grounds of religious confession</li> <li>▪ Witness may only be compelled to answer a “lawful question” as defined under the <i>Parliamentary Evidence Act 1901</i>. Lists types of questions which it has been suggested fall outside what is “lawful”</li> <li>▪ Any objections to a question must be considered on its own merits. House or committee to decide in first instance whether a question is lawful and must be answered but such a decision would be reviewable by a court if the witness were detained for refusing to answer</li> </ul>

	<ul style="list-style-type: none"> <li>▪ No statutory application of rules of evidence to inquiries by Parliament or its committees. Crown Solicitor argued this means evidence, which would not be admissible in a court of law, may be received and acted upon and that parliamentary witnesses may be obliged to answer questions in circumstances in which they would not be so obliged in a court of law.</li> </ul> <p>(sub page s 2-3)</p>
House of Commons UK	<ul style="list-style-type: none"> <li>▪ Prior to 3 Nov 2004, a resolution passed at beginning of every parliamentary session that it is a contempt to tamper with a witness in regard to the evidence to be given before the House or any committee of the House or to endeavour, directly or indirectly, to deter or hinder any person from appearing or giving evidence. On 3 Nov the House approved the recommendations of the Procedure Committee that the passing of the resolution be discontinued. This does not affect the House's powers to deal with contempts or, in the case of tampering with witnesses or giving false evidence on oath, the statutory powers.</li> <li>▪ New section on parliamentary privilege included in the <i>Guidance on Codes of Practice for Board Members of Public Bodies</i> on evidence to Select Committees.</li> <li>▪ Witnesses have brought legal representatives when appearing before committees. Recent practice has been for committees to agree to lawyers accompanying witnesses as supporting witnesses, not as representative counsel.</li> <li>▪ In its Special Report on the conduct of Mr Ian Maxwell and Mr Kevin Maxwell, who declined to answer four questions in public, the Employment Committee noted "It is also the case that there is no right to silence in front of a Select Committee, whatever the position in common law."</li> <li>▪ Sub judge resolution as well as applying to the House applies to Select Committees meeting in public but not in private. However, committees are conscious of the need to ensure that any references in a private meeting to active judicial proceedings are not gratuitous but arise from matters currently before the committee. Committees may suspend an inquiry if a witness is charged with a criminal offence relating to the subject of the inquiry. (Annex B)</li> </ul>
ACT Legislative Assembly	<p>The Assembly does not have any such protections. However, the Assembly tends to rely on resolutions agreed by the Senate in relation to parliamentary privilege in these circumstances. In the current review of standing orders, the Clerk's submission has suggested the adoption of such resolutions to provide protection for self incrimination and legal professional privilege. (sub page 3)</p>
Canadian House of Commons	<ul style="list-style-type: none"> <li>▪ Witnesses appearing before committees enjoy the same freedom of speech and protection from arrest and molestation as do Members of Parliament. Witnesses giving testimony may be assisted by counsel, although permission is seldom sought. Counsel, when permitted, is restricted to an advisory role and may not ask questions or reply on the witness' behalf.</li> <li>▪ In light of the protection afforded witnesses by Parliament, they are expected to exercise judgement and restraint in presenting their views to committees. It is the responsibility of each committee to see that witnesses do not take advantage of this protection to utter defamatory remarks which might give rise to legal proceedings were they made elsewhere. Where witnesses persist in making comments which are deemed to be inappropriate by the committee, their testimony may be expunged from the record.</li> <li>▪ While the procedures that one might find in judicial or other legal proceedings may not be applied in proceedings of the House of Commons or its committees, the concerns of witnesses and the need to protect the reputation and interests of the witnesses are</li> </ul>

	<p>often met by committees going <i>in camera</i>, and establishing blind reporting procedures.</p> <ul style="list-style-type: none"> <li>▪ Tampering with a witness or in any way attempting to deter a witness from giving evidence at a committee meeting may constitute a breach of privilege. Similarly, any interference with or threats against witnesses who have already testified may be treated as a breach of privilege by the House.</li> <li>▪ In addition, it is expected that witnesses will answer all questions put to them. In return, the House of Commons takes a strict position on how its transcripts may, or may not be used by the courts and others. To date the courts have accepted the position of the House of Commons and have not permitted transcripts to be used in any way to adversely affect witnesses. It is through this recognition by the courts that the rights of witnesses are protected.</li> </ul> <p>(see sub pages 3-4)</p>
Victorian Legislative Council	<ul style="list-style-type: none"> <li>▪ Section 19A(7) of the <i>Constitution Act 1975</i> (which relates to the powers of the Assembly and Council, and their committees to administer oaths to witnesses) provides protection against any action for witnesses giving evidence. These protections are removed by Section 19A(8) for any person wilfully giving false evidence.</li> <li>▪ SO 15.10 to 15.15 outline the penalties for providing false evidence and protection afforded to witnesses, that is, all witnesses appearing before Council or its committees entitled to protection of Council; Clerk or officers of Council need special leave of Council to appear as witnesses; witnesses appearing before Council will only be examined by the President; witnesses in custody at Bar examined by President only; any question objected to, or other matter arises, the witness will withdraw from Chamber while matter under discussion.</li> </ul> <p>(sub pages 1-2)</p>
House of Assembly SA	<ul style="list-style-type: none"> <li>▪ When a privilege committee is established, it is usual for the House to pass a motion providing that the committee ‘...shall operate under the SO and practice for the conduct of Select Committees of this House; that it have power to send for persons, papers and records and to adjourn from place to place; and that it report no later than...’ The Houses of Parliament and any Committees thereof do not have the power to examine witnesses under oath (SO 389). (sub page 4)</li> <li>▪ Witnesses appearing before the House or by a committee of the House are protected under SO 390 which provides ‘Witnesses examined by the House or by a committee of the House are entitled to the protection of the House in respect of anything they say in evidence.’ Intimidation is treated as a contempt of parliament and is solely punishable by the House concerned (Erskine May). (sub page 3)</li> <li>▪ A witness is bound to answer all questions which the Committee sees fit to put. There is no protection against self-incrimination. Should a witness elect to remain silent when questioned by the House or a committee of the House, having been offered the opportunity to be heard ‘in camera’ or possibly ‘off the record’, then silence could be construed an unwillingness to assist and be treated as a contempt of Parliament. Given the protection of parliamentary privilege provided under SO, the parliament would expect to be informed. (sub page 4)</li> </ul>



	<ul style="list-style-type: none"> <li>▪ Nor can a witness refuse to provide documents in their possession. Such a refusal would also be considered a contempt and taken back to the House for action. (sub page 5)</li> </ul>
New Zealand House of Representatives	<ul style="list-style-type: none"> <li>▪ A person can object to answering a question that is not relevant (SO 226(2)). An individual may object on other grounds but ultimately may be required to answer (SO 227, 228). Refusal to answer is an example of an action that may be considered a contempt of the House (SO 440(u)). (<i>Natural justice before Select Committees</i> page 13)</li> <li>▪ When a person gives evidence before a committee, they may be accompanied by legal counsel of their choice and may consult that person throughout the hearing (SO 229(1)). Counsel can address procedural issues on an individual witnesses behalf (SO 229(2)). (<i>Natural justice before Select Committees</i> pages 13-14)</li> <li>▪ Evidence can be given on oath and such evidence is subject to the laws of perjury (SO 231, section 252 of the <i>Legislature Act 1908</i>, section 108 of the <i>Crimes Act 1961</i>) (<i>Natural justice before Select Committees</i> page 8)</li> <li>▪ SO 219 – Committee can hear evidence in private; SO 220, 238(2) - Evidence can also be heard in secret and be permanently protected; SO 221- You can ask to be heard in private or secret; SO 221(4) - You will be informed of what may become of evidence given in private or secret. (<i>Natural justice before Select Committees</i> page 12)</li> <li>▪ Witnesses have absolute freedom of speech without fear of facing defamation proceedings (Section 3 of the <i>Imperial Laws Application Act 1988</i>, section 13(1) of the <i>Defamation Act 1992</i>). It does not protect witnesses if they repeat or affirm their comments outside a committee meeting. (<i>Natural justice before Select Committees</i> page 9)</li> </ul>
WA Legislative Council	Apart from the matters raised in 1(b)(i) above the Legislative Council has not established any guidelines or other documentation relating to procedures or witness entitlements in relation to alleged breaches of privilege (sub page 7).

### Question 1b cont: Scope of procedures: (iii)

State	iii. Protection of private individuals & companies (including members of the other House in a bicameral parliament) the subject of adverse reference in parliamentary debates and other parliamentary proceedings, in particular, a <u>right of reply</u> provisions and its scope
House	In 1997 House resolution to establish right of reply procedure exactly same as Senate's except that the House's resolution provides for Committee of Privileges to make its own guidelines with respect to the resolution as long as they are not inconsistent with the resolution. Committee has determined 8 guidelines (Att 4)
Senate	25/2/88 resolution includes right of reply (point 5 – Att 1)
Victorian Legislative Assembly	The Privileges Committee operates under the procedures set out for select committees in our Standing Orders. There are no other special arrangements.
Tasmanian Legislative Council	Citizen's Right of Reply provisions as detailed in SO 331 (Att D)
New South Wales Legislative Assembly	Since November 1996 people or companies who are adversely referred to in parliamentary debates or proceedings, including any proceedings in relation to alleged breaches of parliamentary privilege, can request that a right of reply be extended to them in accordance with the resolution adopted by the House (see Sub pages 3-5)
House of Commons UK	<ul style="list-style-type: none"> <li>▪ Joint Committee on Parliamentary Privilege concluded “that, taken cumulatively, for the Westminster Parliament the drawbacks of a right of reply scheme outweigh the advantages.” (Para 223) (see Annex C)</li> <li>▪ References in debates must be courteous. Abusive language or falsehoods made by Members of House of Commons against Members of House of Lords have usually been met by immediate intervention by the Chair to compel withdrawal of offensive words. Any reflection on the conduct of a Member of the House of Lords must be based on a substantive motion.</li> </ul>
ACT Legislative Assembly	On 4 May 1995 the Legislative Assembly resolved to provide a mechanism for the protection of persons and corporations referred to in the Assembly. Terms of the resolution included in submission pages 3-5.
Canadian House of Commons	<ul style="list-style-type: none"> <li>▪ There are no particular procedures or protections of a legal or procedural nature that specifically protect individuals. The ambit of questions permitted is at the discretion of the Chair of any particular committee.</li> <li>▪ In a recent decision of the Quebec Court of Appeal, <i>Michaud v Bissonnet</i>, 2006 QCCA 775, an individual made public statements of an allegedly discriminatory nature. Given the high public profile of the individual, the matter gained public notoriety. The matter was raised in the National Assembly which adopted a resolution condemning the remarks. The resolution was passed without hearing from the individual concerned. The individual then brought an application to courts to have the decision and resolution quashed. The Quebec courts determined that they did not have any control over the manner in which the legislature</li> </ul>

	<p>dealt with the matter. Any issue that the individual had was political and he could engage in the political process or take his concerns up with the legislature. (see sub pages 4-5)</p>
Victorian Legislative Council	<p>The Legislative Council's SO permit a person who is referred to in the Council to seek a right of reply and to request that the response be incorporated into the parliamentary record. Unlike many jurisdictions, the President alone determines whether an application for a right of reply meets the criteria laid down in the Standing Orders. The procedures governing the right of reply are covered by SO 19.02 to 19.05. (sub pages 3-4)</p>
House of Assembly SA	<ul style="list-style-type: none"> <li>▪ The Houses of the Parliament or any committees do not have the power to examine witnesses under oath (re SO 390). Should a witness be found to attest to an untruth before a House or a Committee, it would be treated as a contempt of Parliament and accordingly punishable by the House concerned. (sub page 4)</li> <li>▪ House of Assembly SO do not make specific provision for procedures to be adopted by a Select Committee where evidence of one witness contradicts that of another witness, or where a witness makes adverse allegations against another witness. However, SO 339 makes strict provision for the nondisclosure of evidence taken before a Select Committee. (sub page 4)</li> <li>▪ Committees not to entertain charges against Members, that is, 'If any allegations are made before any committee against any Member of the House, the committee may direct that the House be informed of the allegations but may not itself proceed further with the matter.' (sub page 4)</li> <li>▪ There is no provision for citizen's right of reply in the House of Assembly to what is said in Parliament. However, the Legislative Council has recently provided for such a reply through a resolution passed at the beginning of each session. (sub page 5)</li> </ul>
New Zealand House of Representatives	<ul style="list-style-type: none"> <li>▪ If allegations have been made in a select committee proceedings about an individual that may seriously damage their reputation, including during the hearing of secret evidence in some instances, the individual will be informed of those allegations. The individual will be given reasonable opportunity to respond in writing and/or by appearing before the committee. Such a response will be received as evidence in the usual way. If the original allegation was made as private or secret evidence, your response will be received under the same conditions. Committees are under no obligation to make a finding in relation to an allegation (SO 239). (<i>Natural justice before Select Committees</i> page 16)</li> <li>▪ If an individual considers that the evidence of additional witnesses is in their interest, they may ask to committee to hear those witnesses. However, the decision whether or not to hear those witnesses rests with the committee (SO 239(1)(b)). (<i>Natural justice before Select Committees</i> page 16)</li> <li>▪ Committees can make adverse findings in their reports. Individuals can respond to serious adverse findings if they are named in a report before the committee reports to the House (SO 247). Draft reports are confidential and individuals cannot publicise them, to do so would constitute a possible contempt (SO 240(1), 400(p)). (<i>Natural justice before Select Committees</i> page 19)</li> </ul>
WA Legislative	<p>Details not provided by WA</p>

Council	
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### Question 1b cont: Scope of procedures: (iv)

State	iv. Resolution claims of <u>Executive privilege</u> or 'Crown privilege' (public interest immunity) as grounds for refusing to give evidence or produce documents demanded of a parliamentary committee
House	<ul style="list-style-type: none"> <li>▪ SO 249 to 253 apply re members and Senators appearing as witnesses.</li> <li>▪ Under this doctrine the Executive Government may seek to claim immunity from requests or orders, by a court or by Parliament, for the production of documents on the grounds that public interest disclosure of the documents in question is prejudicial to the public interest. (HRP, 5<sup>th</sup> ed, pp 591-592). If a Minister certified it was contrary to the public interest for documents under subpoena to be produced, the certificate was conclusive and the courts would not go behind that certificate. More recently court decisions have supported the principle that no class of document is entitled to absolute immunity from disclosure and that all cases may be resolved by the courts on the balance of competing aspects of the public interest.</li> <li>▪ By end of 19<sup>th</sup> century despite the powers of each House of the UK parliament to enforce the production of documents, a sufficient cause had to be shown for the exercise of that power. This unquestioned power of the House of Commons is extended to the Australian Parliament by way of section 49 of the Constitution. Questions raised on this issue especially in connection with parliamentary committee inquiries. Because of the Government majority, less likely to be raised in the House and when they do more likely that a compromise will be reached.</li> <li>▪ In Senate the Senate has not conceded its right to determine Executive claims of public interest immunity but it has not taken the steps to enforce production of documents when immunity has been claimed, other than exacting a political penalty.</li> <li>▪ Important to note that because of the different aspects of public interest involved, that is, the proper functioning of the Parliament against the due administration of justice, the question of disclosure of documents to Parliament is not the same question as disclosure of documents to the courts.</li> </ul>
Senate	<ul style="list-style-type: none"> <li>▪ While the Senate has not conceded claims of a public interest immunity by the executive are anything more than claims, and not established prerogatives, it has not sought to enforce demands for evidence or documents against a ministerial refusal to provide them but has reluctantly adopted other remedies, eg a motion to censure a minister, refusal to pass government legislation, procedural penalties, resort to alternate methods of obtaining the required information such as committee hearings.</li> <li>▪ The existence of the claimed right of public interest immunity in respect of parliamentary proceedings has not been adjudicated by the courts and is not likely to be. Several Senate committees have considered the question but have not developed agreed procedures or criteria for determining whether a claim for public interest immunity should be granted. There appears to be a consensus that the struggle between the two principles involved, the executive's claim for confidentiality and the Parliament's right to know, must be resolved politically. In practice for government this means a political judgement whether disclosure of the information will be politically more damaging than not disclosing it. (see Odgers' 11<sup>th</sup> ed, pp 464-485)</li> </ul>

Victorian Legislative Assembly	The Privileges Committee operates under the procedures set out for select committees in our Standing Orders. There are no other special arrangements.
Tasmanian Legislative Council	<i>Parliamentary Privileges Act 1858</i> (Att A) Section 2(2) states ‘A Member of either House may be ordered to attend before the House or any such committee, without summons, in the manner heretofore accustomed.’
New South Wales Legislative Assembly	No procedures adopted by House or committees to resolve claims of executive or crown privilege. If a witness refuses to answer a question posed or to produce documents on the basis of executive privilege or public interest immunity the decision to pursue the matter would be left to the House or the committee. If any action was taken, such as detaining a person for refusing to answer a question, or suspending a member for not producing documents in accordance with a resolution passed by the House the matter would be justiciable by a court of law as was the case in <i>Egan v Chadwick</i> (1999) 46 NSWLR 563. (sub page 5)
House of Commons UK	<p>Since 1979 governments have given a series of undertakings that time would be provided for debate in the fairly rare cases where there was a disagreement about the provision of information or papers. Significant number of cases where Committees have been refused specific documents but Government has not provided time for the subject to be debated. Liaison Committee recommendation to change SO to achieve this not implemented.</p> <p>See 1978 Clerk of House memorandum to the Procedure Committee on the power of Select Committees to send for persons, papers and records.</p> <ul style="list-style-type: none"> <li>▪ Powers of the House and its Select Committees are circumscribed by qualifications, apparent contradictions and lack of opportunity to exercise the powers which undoubtedly exist.</li> <li>▪ In the case of the Peers and Officers of the House of Lords, that House must be moved to give leave to the witness to attend. In case of Peers such leave is given by the House of Lords only “if his Lordship thinks fit”.</li> <li>▪ Members of the House of Commons (including Ministers) are not summoned to a Select Committee but are invited to attend by the Chairman. If a Member refuses the House ought to be acquainted with the matter. There is no known instance of a Member (not being a Minister) persisting in a refusal to give evidence; but Members have been ordered by the House to attend Select Committees.</li> <li>▪ Erskine May’s 19<sup>th</sup> Ed p 687, states “When a Member submits himself to examination without an order of the House, he is treated precisely like any other witness, and is not at liberty to qualify his submission by stipulating that he answer only such questions as he pleases.” However, May’s statement has not been tested in the House. <ul style="list-style-type: none"> <li>➤ There is no statement of government policy on Ministerial evidence before Select Committees on record, though a letter addressed by the late Mr R Crossman 9 May 1967 to Chair of certain Select Committees states that Ministers would be unwilling to give evidence to Select Committees on certain matters such as matters of national security, information relating to the private affairs of individuals etc (see Memorandum p 21)</li> <li>➤ At the request of a witness oral evidence maybe ‘sidelined’ from publication with the agreement of a Select Committee.</li> </ul> </li> <li>▪ Since the powers of a Select Committee are delegated by the House and in the last resort only enforceable by the House, the</li> </ul>

powers of the House to send for Papers and Records are relevant here.

- When the House wishes to obtain a paper it does so by making an Order or moving an Address for a return. A return from the Privy Council or from departments headed by a Secretary of State is called for by the House by means of a Humble Address to the Queen; other information is sought direct by means of an order of the House.
- Limitations on the powers of the House to send for a paper from a public department, as set out in Erskine May 4<sup>th</sup> to 17<sup>th</sup> eds. It states that such papers as the House may order by return must:
  - Relate to a public matter in which House or Crown has jurisdiction;
  - Be obtainable from public offices, or corporations, bodies or offices constituted for public purposes by Acts of Parliament or otherwise; and not from private associations, nor individuals not exercising public functions; and
  - When sought from government departments, be of a public and official character and not private or confidential.
- There are differing views on whether a particular paper conforms with the third criterion.
- The decision on the production or withholding of papers rests on the floor of the House after arguments put by both sides. As the Government has the numbers in the House the Government's view will usually prevail.
- A Select Committee has no power to send for papers, which if required by the House itself, would be sought by Address. Since most Government Departments are headed by Secretaries of State this severely limits the formal powers of a committee. However, Select Committees can make informal request of a Secretary of State, as to any Minister, for papers. The remedy for the failure to produce papers lies against Ministers rather than officials who work under them.
- It is clear that the full powers of the PPR can be exercised by Select Committees in regards to Nationalised Industries (which are different from civil servants).
- It is ministerial refusals to produce documents which have provided the greatest problems for Select Committees in the conduct of inquiries. However, majority of Select Committees receive cooperation with Government and State organisations with considerable confidential information provided on the basis of mutual trust.
- Also outlines four methods of enforcing Select Committee powers in the rare cases where it is needed, namely:
  - recourse to the courts (doubt whether this is practicable);
  - giving penal powers to Select Committees (this would be an extension of the Select Committees privileges);
  - enforcement as a matter of privilege (distinction between private persons and Ministers, civil servants and officials of institutions on the other doubtful if this would be profitable); and
  - enforcement by the House (classic question of the power of House vis-à-vis the Crown. Suggestion that the Privileges Committee could consider restoration of the right in favour of the chair of a Select Committee to move for a Address or an order for a return at the time of Public Business when a motion could be moved even though it were opposed by the Department concerned. Right should be exercisable on a Special Report from a Select Committee that they were unable to obtain necessary information from a government department or institution setting out circumstances of the refusal and reason

	for requirement of the information accompanied by an automatic provision for debate.)
ACT Legislative Assembly	Again, in the absence of any such procedures, the Assembly has tended to rely on House of Representatives practice (they are linked to that practice by SO 275) and, where the House does not provide any remedy, the Senate resolutions on parliamentary privilege. (sub page 6)
Canadian House of assembly	<ul style="list-style-type: none"> <li>▪ Most documents which committees seek are provided voluntarily. They include government reports, statistics, correspondence, memoranda and agreements of various sorts, as well as briefs. Ordinarily, committees are able to obtain the documents they require for their work by simply requesting them. Where a committee meets with a refusal to provide a document it deems essential to its work, the committee may pass a motion ordering its production. If such an order is ignored, the committee has no power to compel its production, but may report the matter to the House and request that appropriate action be taken.</li> <li>▪ Although the House has not placed any restrictions on the power to send for papers and records, it may not be appropriate to insist on the production of papers in all cases.</li> <li>▪ Where concerns about confidentiality exist, a committee may agree to have documents tabled at an <i>in camera</i> meeting.</li> </ul> (see sub page 5)
Victorian Legislative Council	<ul style="list-style-type: none"> <li>▪ SO 15.06 to 15.08 outline the process by which a Member of the Council may be summonsed to give evidence and the powers to punish members who refuse to attend the summons. 15.06 allows the Council or a Committee of the Council as a whole to attend as a witness to order this. 15.07 allows a Select Committee to have their Chair request attendance in writing. Under 15.08 if a Member of the Council refuses to attend and give evidence to a Select Committee for the committee to acquaint the Council accordingly. (sub page 2)</li> <li>▪ SO 15.09 outlines the process by which a Member of the Assembly may be requested to provide evidence to the Council or any committee thereof. This is done by letter to the Assembly seeking leave for the member or officer to attend to give evidence on the matters stated in the Message. (sub page 2)</li> </ul>
House of Assembly SA	<ul style="list-style-type: none"> <li>▪ It is a convention that Cabinet Documents are not available to the Parliament on the grounds that public disclosure of the documents would be prejudicial to the public interest. While it can be argued that such papers can be viewed, providing measures are taken to protect the public interest, it is highly unlikely that the Parliament would order such papers to be delivered. (sub page 5)</li> </ul>
New Zealand House of Representatives	Awaiting information
WA Legislative Council	<ul style="list-style-type: none"> <li>▪ Section 58C, <i>Financial Administration and Audit Act 1985</i> ostensibly imposes a prohibition against agencies entering into confidentiality agreements, but it also reinforces in statutory form a Minister's 'right' to refuse to produce documents to the Parliament.</li> <li>▪ Clause 82 of the <i>Financial Management Bill 2006</i> (currently before the WA legislative Council) expresses the Minister's 'right'</li> </ul>



to refuse the production of documents in even clearer terms. However, when read with clause 36 of the *Auditor General Bill 2006* (also currently before the WA Legislative Council) the Auditor General has a power to inquire into the Minister's decision to refuse the production of documents to the Parliament and to report to the Legislative Assembly Public Accounts Committee. (see sub page 2)

- *Parliamentary Privileges Act 1891*, section 6 states 'A member of either House may be ordered by the House of which he is a member to attend before either House, or before any Committee of either House, without summons.' (page 1)

## Question 1b cont: Scope of procedures: (v)

State	v. <u>Procedures for raising alleged breaches of parliamentary privilege</u>
House	<ul style="list-style-type: none"> <li>▪ General procedures for the conduct of proceedings of the Privileges Committee set out in Procedure Committee report <i>It's your House</i> App A Procedures for the conduct of proceedings of the House Committee of Privileges</li> <li>▪ Raised under SO 51 &amp; 52 which set out rules governing raising matters of privilege when the House is sitting and not sitting respectively (see Att 3)</li> </ul>
Senate	<ul style="list-style-type: none"> <li>▪ Matters of privilege are raised in writing with the President and the President considers whether precedence should be given to refer matter to the Senate Committee of Privileges (see para 7 of Senate resolutions of 25/2/88)</li> <li>▪ Senate resolution 25/2/88 sets out the procedures for raising a matter of privilege (point 7). Criteria to be taken into account in determining whether a motion arising from a matter of privilege should be given precedence over other business set out at point 4. Timing of motions relating to contempts set out at point 8. Point 2 sets out Procedures for protection of witnesses before the Privileges Committee</li> </ul>
Victorian Legislative Assembly	<ul style="list-style-type: none"> <li>▪ Privileges Committee operates under procedures set out for select committees in Standing Orders. No other special arrangements</li> <li>▪ Set out in Rulings from the Chair</li> </ul>
Tasmanian Legislative Council	<p>SO 57 &amp; 130 (Att E).</p> <p>SO 57 states 'An urgent Motion, directly concerning the privileges of the Council may be made without Notice and shall have precedence over all other Motions and Orders of the Day. Such Motion, when not at once disposed of but appointed for consideration on a future day, shall stand first on the Notice paper for that day.</p> <p>SO 130 states 'Any Member may rise to speak to a Question of Order or upon a matter of Privilege suddenly arising.'</p>
New South Wales Legislative Assembly	<ul style="list-style-type: none"> <li>▪ Sudden matters dealt with on the floor of the House under SO 101 and if the matter is accorded precedence this is done under SO 127.</li> <li>▪ Other matters of privilege dealt with under December 2003 resolution which sets out procedures (sub page 1)</li> <li>▪ See 1a above</li> </ul>
House of Commons UK	See 1a above
ACT Legislative Assembly	See 1a above
Canadian House of Commons	<ul style="list-style-type: none"> <li>▪ SO 48 applies.</li> <li>▪ The decision of the House on a question of privilege, like every other matter which the House has to decide, can be elicited only</li> </ul>

	by a question put from the Chair by the Speaker and resolved either in the affirmative or in the negative, and this question is necessarily founded on a motion made by a Member. See sub pages 6-11 including flow chart.
Victorian Legislative Council	SO 19.01 outlines the process for dealing with an alleged breach of privilege (sub page 1)
House of Assembly SA	Drawn from SO and House practice (based on House of Commons practice). See pages 1-3 of sub.
New Zealand House of Representatives	Awaiting information
WA Legislative Council	<ul style="list-style-type: none"> <li>▪ SO 122 (Members ordered to attend, and arrest of), 134 (additional requirements for certain petitions that arise as a matter of privilege) and 155 (procedure for Members raising matter of privilege) (sub pages 3-5) establish procedures to be followed when dealing with a contempt or breach of privilege.</li> <li>▪ Observes that in the House of Commons, before a member can raise a question of privilege on the floor of the House, he is required to establish a prima facie case to the Speaker. On 28 May 1998, the President of the Legislative Council of WA said that the then Attorney General had invited him to consider the House of Commons practice. The president ruled: “I have considered them in conjunction with our SO. I indicate to the House that our SO do not provide me with the opportunity to require a member to establish a prima facie case: that is the duty of the House.” (sub pages 5-6)</li> <li>▪ If a witness fails or refuses to attend or give evidence before a Legislative Council committee, the matter shall be reported to the Legislative Council by way of special report. (sub pages 7-8)</li> <li>▪ The procedure in the legislative Council to deal with for example non-compliance to a summons can be said to be rather archaic and procedural mechanisms can delay the matter being brought on for debate. In addition, until recent times, notices of motion lapse from the Notice Paper on prorogation and the whole process needs to be restarted when parliament resumes. Since October 2003 the Government determined that section 4 of the Constitution Act 1889 did not require an annual prorogation of Parliament and this has not happened since August 2002. It can therefore be seen that the ‘benefit’ of a notice of motion is probably not ‘production’ – rather ‘publicity’. Publicity could also be achieved by the asking of questions during question time (sub page 8).</li> </ul>

## Question 1b cont: Scope of procedures: (vi)

State	vi. <u>Definition of matters that constitute contempts of parliament</u>
House	<ul style="list-style-type: none"> <li>▪ House not adopted criteria or list of acts that would constitute contempts. However, would have regard to the criteria set out by the Senate and <i>Parliamentary Privileges Act 1987</i> s. 4</li> <li>▪ Does not have list of acts that would constitute contempts but HRP Chp 19 pp 707-754 lists similar acts to the Senate that could be seen to constitute contempts</li> </ul>
Senate	Senate resolution specifies criteria to be considered when determining whether matters involve a contempt (point 3) and lists matters which Senate declares, as a matter of guidance, to be acts which may be treated as contempts (point 6)
Victorian Legislative Assembly	The Privileges Committee operates under the procedures set out for select committees in our Standing Orders. There are no other special arrangements. (page 3)
Tasmanian Legislative Council	SO 57 & 130 (Att E). (Note also in the <i>Parliamentary Privileges Act 1858</i> section 3 lists offences which can be punished as contempts)
New South Wales Legislative Assembly	<ul style="list-style-type: none"> <li>▪ No definition drafted by House or committees. NB No private individual or member found to be in contempt since 1929. Acts that could be considered contempt judged on case by case basis. No list of contempt undoubtedly related to the NSW Parliament having no power to punish for contempt.</li> <li>▪ The House can pass a resolution finding a person, including a member, to be in contempt of the House. The House can also admonish non-members for contempt and order their removal for disturbing the proceedings of the House. However, the House can only deal with a contempt committed by a member in a non-punitive way, this can include expelling a member from the House in the interests of self protection [see <i>Armstrong v Budd</i> (1969) 71 SR (NSW) 386].</li> <li>▪ House can direct the Attorney General to prosecute contempt in the courts where it is also punishable under the general law.</li> </ul> <p>(sub pages 5-6)</p>
House of Commons UK	Joint Committee on Parliamentary Privilege describes contempts as comprising “any conduct (including words) which improperly interferes, or is intended or likely improperly to interfere, with the performance of either House of its functions, or the performance by a member or officer of the House of his duties as a member or officer.” While noting that the categories of conduct constituting contempt are not closed, the Committee listed some types of contempt see Annex D. See <i>Third report from the Committee of Privileges 1976-77</i> re what acts should be treated as contempts.
ACT Legislative Assembly	<p>The Assembly has not set out a definition of matters that may constitute a contempt. However, listed below is a compilation of those matters that have been classified as a contempt since the Assembly was established in 1989:</p> <ul style="list-style-type: none"> <li>▪ Unauthorised publication of private deliberations of a committee before it reports</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Publication of draft reports of committees before their presentation</li> <li>▪ Premature and unauthorised release of information in Government responses to committee reports</li> <li>▪ Knowingly receiving and without reasonable excuse retaining and using emails destined for a Member of the Assembly</li> <li>▪ Refusal by a Minister to provide answers to a select committee on a matter within his portfolio responsibility but the releasing of the information publicly the next day</li> <li>▪ Freedom of speech and debates or proceedings in Parliament should not be impeached or questioned in any court or place out of Parliament</li> <li>▪ Release of a flyer by the Chair of a Committee relating to a matter before that Committee (sub page 6)</li> </ul>
Canadian House of Commons	<ul style="list-style-type: none"> <li>▪ Any disregard of or attack on the rights, powers and immunities of the House and its Members, either by an outside person or body, or by a Member of the House, is referred to as a “breach of privilege” and is punishable by the House. There are, however, other affronts against the dignity and authority of Parliament which may not fall within one of the specifically defined privileges. Thus, the House also claims the right to punish, as a contempt, any action which, though not a breach of a specific privilege, tends to obstruct or impede the House in the performance of its functions; obstructs or impedes any Member or Officer of the House in the discharge of their duties; or is an offence against the authority or dignity of the House, such as disobedience of its legitimate commands or libels upon itself, its Members, or its Officers. “The rationale of the power to punish contempts, whether contempt of court or contempt of the Houses, is that the courts and the two Houses should be able to protect themselves from acts which directly or indirectly impede them in the performance of their functions.” In that sense, all breaches of privilege are contempts of the House, but not all contempts are necessarily breaches of privilege. (sub page 12)</li> <li>▪ Classification of cases to date set out at page 12.</li> </ul>
Victorian Legislative Council	<ul style="list-style-type: none"> <li>▪ Standing Orders 10.07 to 10.10 define contempt and outline the Legislative Council’s powers and actions it may take if a person is found to be in contempt.</li> <li>▪ SO 10.07 states: Any person who disobeys an order of the Council, or any person other than a Member who wilfully interrupts the sitting of the Council, may be declared guilty of contempt.</li> </ul> <p>(sub page 3)</p>
House of Assembly SA	<p>There is no codified list of those offences which are considered to be a contempt of Parliament in SA. However, it has always been considered that the SA Houses of Parliament have power to punish for contempt and breaches of privilege that the public has no redress in a Court. However, as the House of Commons may, in addition to or in substitution for its own proceedings, direct the Government Law Officer to prosecute the offender, it is presumed that the SA Parliament also possesses this power. (sub page 5)</p>
New Zealand House of Representatives	<p>See publication <i>Natural justice before Select Committees</i> pp 33-34 (SO 400) for examples of contempts.</p>

WA Legislative Council	Part II, Chapter VIII, <i>The Criminal Code</i> sections 54-61 establishes 8 offences relating to parliamentary proceedings (sub page 2)
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### Question 1b cont: Scope of procedures: (vii)

State	vii. <u>Abuse by parliamentarians of their right to freedom of speech</u> in the course of parliamentary debates and other proceedings of parliament
House	No provision. Speakers have often drawn the attention of members to the need to exercise right of freedom of speech in a responsible manner (see HRP App 25, pp 840-881 eg matters 153 & 163)
Senate	Resolution (point 9) cautions Senators about their exercise of freedom of speech privilege.
Victorian Legislative Assembly	The Privileges Committee operates under the procedures set out for select committees in our Standing Orders. There are no other special arrangements.
Tasmanian Legislative Council	Submission stated - No mention
New South Wales Legislative Assembly	If member abuses the privilege of free speech the only remedy is an action by the House or committee. Legislative Assembly has not taken action against members for abusing freedom of speech although statements about unsubstantiated allegations have been made. Speakers also ruled if member makes unsubstantiated reflections (on a person outside the House), that a substantive motion may be required. (sub page 6)
House of Commons UK	See (iii) Right of reply above
ACT Legislative Assembly	The Legislative Assembly has formally set down its views on the right of freedom of speech. On 4 May 1995 the Legislative Assembly passed a resolution in relation to freedom of speech of Members of the Assembly: see submission page 7 for detail on exercise of freedom of speech. (sub page 7)
Canadian House of Commons	<ul style="list-style-type: none"> <li>▪ SO 11 and 18 apply</li> <li>▪ It is unacceptable to allude to the presence or absence of a Member or Minister in the Chamber</li> <li>▪ Disrespectful reflections on Parliament as a whole, or on the House and Senate as components of the Parliament are not permitted</li> <li>▪ Reflections must not be cast in debate on the conduct of the Speaker or other presiding officers</li> <li>▪ Members are prohibited from speaking disrespectfully of the Sovereign, the Royal family, the Governor General or Administrator of Government in Canada (in the absence of the Governor General)</li> <li>▪ Members are discouraged from referring by name to persons who are not Members of Parliament and who do not enjoy parliamentary immunity, except in extraordinary circumstances when the national interest calls for the naming of an individual.</li> <li>▪ Members may not speak or reflect upon any decision of the House</li> <li>▪ The proceedings of the House are based on a long-standing tradition of respect for the integrity of all Members. Thus, the use of</li> </ul>

	<p>offensive, provocative or threatening language in the House is strictly forbidden. Personal attacks, insults and obscene language or words are not in order. A direct charge or accusation against a Member may be made only by way of a substantive motion for which notice is required.</p> <ul style="list-style-type: none"> <li>▪ The rules of relevance and repetition are intertwined and mutually reinforcing.</li> </ul> <p>(see sub pages 12-15)</p>
Victorian legislative Council	No details provided by Vic
House of Assembly SA	Right of freedom of speech is one of the most closely guarded and most notable privileges of Members. Freedom of speech in debate or other proceedings is absolute, and derives from Article IX of the Bill of Rights. There are no derogations from this. Two court cases dealing with this issue are outlined. (sub pages 5-8)
New Zealand House of Representatives	Unless the House determines otherwise, the Privileges Committee is the only committee that can investigate the conduct of members of Parliament (SO 201). ( <i>Natural justice before Select Committees</i> page 10)
WA Legislative Council	SO 122 applies – members ordered to attend, and arrest of (page 3)



### Question 1b cont: Scope of procedures: (viii)

State	viii. <u>Use made of evidence of parliamentary proceedings in court proceedings</u> & whether made with or without permission of the House
House	Leave of House is still required when the proceedings of the House or committees is to be produced or referred to in court or tribunal proceedings. This continuing practice may be considered unnecessary as long as the use to which the records will be put does not infringe <i>Parliamentary Privileges Act 1987</i> s.16.
Senate	Resolution 25/2/88 (point 10) permits reference being made to proceedings of the Senate and its committees in court or tribunal proceedings without leave of the Senate being sought. However, it does so without detracting from the law as to the use which can be made of those proceedings (ie, they cannot be 'questioned or impeached') Senate should be notified of any admission of evidence or reference to proceedings of the kind referred to in the preceding paragraph
Victorian Legislative Assembly	The Privileges Committee operates under the procedures set out for select committees in our Standing Orders. There are no other special arrangements.
Tasmanian Legislative Council	Submission stated - No mention
New South Wales Legislative Assembly	<ul style="list-style-type: none"> <li>▪ In the past applications were made to tender extracts of Hansard in court proceedings. It has now become accepted that Hansard can be tendered as evidence in court to prove matters of fact (ie something was said in the House) so long as the Hansard record is not brought into question or used for drawing inferences (this includes any inquiry into motives and intentions of members of parliament in relation to anything said in the House).</li> <li>▪ For all other use of parliamentary proceedings the leave of the House must be sought.</li> </ul> (sub pages 6-7)
House of Commons UK	In 1980 the House of Commons partially relaxed its claim to exclusive cognizance when it agreed to a resolution permitting reference to be made in court to the official record of parliamentary debates (Hansard) and the published reports and evidence taken by committees. The same resolution made clear that the statutory protection afforded to proceedings in Parliament by the Bill of Rights 1689 was not affected by the relaxation. As a result of the decision in <i>Pepper v Hart</i> Hansard maybe used in court to establish what was said and done in Parliament as a matter of history. Parliamentary material used in court where the legislation is considered to be ambiguous, or obscure, or leads to ambiguity.
ACT Legislative Assembly	The Assembly has, on several occasions, been represented by counsel in the courts to remind them of the restrictions of using parliamentary proceedings. The most notable of these surrounded the use by a court of a tabled report and the possible use of

	evidence. A report of a Board of Inquiry into Disability Services has been presented to the Assembly, and the Speaker was concerned about the potential use of the document (which it was argued was a proceeding in parliament) by four public servants. In April 2002 Counsel for the Speaker sought and was granted leave to appear as an <i>amicus curiae</i> in the Supreme Court of the Australian Capital Territory to assist the Court in relation to the use of the document. The Judge ultimately ruled that privilege had not been established and that the report could be admitted into evidence. (sub pages 7-8)
Canadian House of Commons	The House of Commons has vigorously objected to the use of any testimony given before the House or its committees for purposes outside of the House of Commons. (sub page 16)
Victorian Legislative Council	No details provided by Vic
House of Assembly SA	No details provided by SA
New Zealand House of Representatives	Generally there is no transcript of oral evidence unless a committee specifically resolves to have the evidence recorded. Members have generally preferred the informality of a hearing that is not recorded. However, recording and/or transcribing evidence has increased in recent years (SO 400(b) and (o)). ( <i>Natural justice before Select Committees</i> page 8) Awaiting further information
WA Legislative Council	No details provided by WA

## Question 2a and 2b: Involvement of ordinary courts of law

State	Actual or proposed transfer of all or limited aspects of matters of the determination of matters involving a breach of parliamentary privilege to ordinary courts of law
House	No to both
Senate	No to both
Victorian legislative Assembly	There has not been a proposal to transfer the determination of any matter dealing with privilege to (sub page 3)
Tasmanian Legislative Council	See <i>Parliamentary Privileges Act 1858</i> s. 11 (Power to direct Attorney-General to prosecute for certain offences) ‘Each House of Parliament shall have the like power of directing the Attorney-General to prosecute for any offence cognizable by the Supreme Court, committed against either of the said Houses or any Member thereof, as is possessed by the Commons House of the Imperial Parliament of directing the Attorney-General of England to prosecute for offences against the said Commons House of parliament or any Member thereof, and every person convicted of any such offence before said court shall be liable to imprisonment for a term not exceeding 2 years, or a fine not exceeding 200 penalty units and imprisonment until such fine be paid, or to both such punishments. (sub page 1; Att A page 4)
New South Wales Legislative Assembly	Matters involving breach of privilege are considered by the House, either after the Speaker has determined that there is a prima facie breach of privilege in relation to matters suddenly arising, or following consideration by the Privileges and Ethics Committee. No proposals to transfer such matters to courts. However, courts may consider whether a particular parliamentary privilege exists at common law and its scope including any action taken by the House in response to a breach of privilege or contempt. (sub pages 7-8)
House of Commons UK	No. A fundamental constitutional principle is that courts do not interfere with the House’s own affairs.
ACT Legislative Assembly	No to both (sub page 8)
Canadian House of Commons	<ul style="list-style-type: none"> <li>▪ There are no circumstances in which the House of Commons has requested or permitted the courts to determine matters involving breaches of privileges. As noted above, the House of Commons has always taken the position that while the courts may have the jurisdiction to determine whether a privilege exists, or the scope of any claimed privilege, once a category of privilege is found to exist the exercise of any privilege, or any determination within the sphere of activity protected by the privilege is within the exclusive jurisdiction of the House of Commons. All matters that fall within parliamentary privilege are within the domain of the House of Commons and are not reviewable in the courts. This position was affirmed by the Supreme Court of Canada in <i>Canada (House of Commons) v Vaid</i>, 2005 SCC 30.</li> </ul>

	<ul style="list-style-type: none"> <li>▪ The House of Commons considers all questions of contempt of the House of Commons and matters of parliamentary privilege within its exclusive jurisdiction, and as such the courts lack the constitutional jurisdiction to review or question any determination by the House of Commons on such questions. (see sub pages 16-17)</li> </ul>
Victorian Legislative Council	Currently there is no proposal to transfer these matters to the courts of law. (sub page 4)
House of Assembly SA	No (sub page 8)
New Zealand House of Representatives	Awaiting information
WA Legislative Council	As noted above, Part II, Chapter VIII, of <i>The Criminal Code</i> , provides that certain contempts of the Parliament are either crimes or simple offences that may be dealt with by the courts. This, however, is only a concurrent jurisdiction (operating alongside that of the Parliament's inherent jurisdiction) and in no way affects the ability of the Parliament itself to deal with a contempt or a breach of its privileges. (sub pages 2-3)

### Question 3: Limits on expense and timing of process

State	Any limits on the expense and timing of any proceedings to determine allegations of parliamentary proceedings
House	No
Senate	No
Victorian Legislative Assembly	No (sub page 3)
Tasmanian Legislative Council	No (sub page 1)
New South Wales Legislative Assembly	No. Not been an issue as members of the Legislative Assembly raise few breaches of privilege or contempt and as such the need for efficiency or budgetary restraints in determining allegations of breaches of privilege has not been an issue. (sub page 8)
House of Commons UK	No
ACT Legislative Assembly	No, there has been no such proposal. Having said that, there have not to date been any cases which have incurred significant costs. (sub page 8)
Canadian House of Commons	No such procedures have been adopted by the Canadian House of Commons, nor have any received serious consideration. Neither of the two concerns (efficiency and expense) mentioned above is particularly relevant to our protocols in respect of privilege; these are generally viewed as both efficient and effective. (sub page 17)
Victorian Legislative Council	There is currently no proposal to limit the scope or length of any inquiries, should the issue of privilege arise, in the interests of efficiency and budgetary considerations. (sub page 4)
House of Assembly SA	No (sub page 8)
New Zealand House of Representatives	Awaiting information
WA Legislative Council	No

