

Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters - November 1989

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Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters

Introduction

Accountability

1.1 In the Australian system of parliamentary government, and consistent with the traditional understanding of ministerial responsibility, the public and parliamentary advocacy and defence of government policies and administration has traditionally been, and should remain, the preserve of Ministers, not officials. The duty of the public servant is to assist ministers to fulfil their accountability obligations by providing full and accurate information to the Parliament about the factual and technical background to policies and their administration. The guidelines are therefore aimed at encouraging the freest possible flow of such information between the public service, the Parliament and the public.

Scope of guidelines

1.2 The guidelines apply primarily to the preparation of submissions and the giving of evidence to parliamentary committees by officials, although sections 3-6 also discuss their relevance to contexts outside parliamentary committees, including party committees, Royal Commissions, individual Members of Parliament, speeches, public inquiries and court appearances.

1.3 The previous version of the guidelines was tabled in the Parliament in August 1984. Changes have been made to take account of the Senate Parliamentary Privilege Resolutions of 25 February 1988 (see Appendix) and recent experience with the appearance of witnesses before parliamentary committees.

Parliamentary Committees

Application of Guidelines

2.1 This section is designed to assist departmental officials, statutory office holders and the staff of statutory authorities appearing before parliamentary committees, by informing them of the principles they are required by the Government to follow. It is recognised, however, that the role and nature of some statutory authorities will require the selective application of these guidelines (see paragraph 2.49).

Parliamentary rules of procedure

2.2 This section also takes into account the Senate Parliamentary Privilege Resolutions of 25 February 1988 which include procedures to be observed by Senate committees in their dealings with witnesses. (References to the Senate resolutions in these guidelines appear as r.1.1; r.1.6 etc.) At the time of tabling these guidelines, the House of Representatives had not dealt with the committee procedures which have been proposed by the Standing Committee on Procedure. These are broadly similar, with some additions, to the procedures adopted by the Senate.

2.3 These guidelines should, nonetheless, be read in conjunction with the Senate Parliamentary Privilege Resolutions, the House of Representatives Standing Committee on Procedure's Report on Committee Procedures for Dealing with Witnesses dated 4 April 1989 and the *Parliamentary Privileges Act 1987*, particularly sections 13 and 16.

Inquiries into administrative matters

2.4 Where a committee's inquiry is directed towards the examination of departmental administration and practice, it is for the departmental Secretary, with the general consent of the relevant Minister, to use his or her discretion as to the extent to which aspects of these guidelines, such as the clearing of written evidence and the selection of witnesses, are to be followed. In this context a witness should also be aware of the provisions of s.12 of the Parliamentary Privileges Act (see para 2.40).

Committees dealing with individual conduct

2.5 Where a committee is inquiring into the personal actions of a Minister (or official) and seeks information from officials, there may be circumstances where it is not appropriate for the requirements set out in para 2.14 for clearance of evidence to be followed. (Note also that the Senate resolutions provide that a witness may apply to have assistance from counsel during the course of a hearing (r.1.14 and r.1.15). See para 2.42.

Joint Statutory Committees

2.6 The *Public Works Committee Act 1969*, the Public Accounts Committee Act 1951 and the Australian Security Intelligence Organisation Act 1979 provide for the summoning of witnesses and raise some special considerations. For example, s.23 of the Public Works Committee Act makes special provision for hearing of evidence on confidential matters and the Public Accounts Committee Act and the Public Works Committee Act have special provisions relating, among other things, to self-incriminating evidence (see ss.19 and 25, respectively). In these and similar cases, the special provisions of the relevant Acts take precedence.

Preliminaries to an inquiry

Requests for attendance

2.7 Generally requests for an official to attend a committee hearing in an official capacity, or to provide material to it, are made through the relevant Minister. There are, however, exceptions - for example the Estimates Committees and the Public Accounts Committee (see para 2.4). (Note also that the Senate resolutions provide that a witness will be invited to give evidence or produce documents, but may be summoned to do so if circumstances warrant such an order (r.1.1 and r.1.2).)

Choice of witnesses

2.8 A Minister may delegate to the departmental Secretary the responsibility of deciding the official(s) most appropriate to provide the information sought by the committee. It is essential that the official(s) selected should have sufficient responsibility or be sufficiently close to the particular work area to be able to satisfy the committee's requirements.

Preparation of witnesses

2.9 It is also essential that all witnesses are thoroughly prepared for hearings. Such preparation should include ensuring familiarity with probable lines of questioning, either by discussion with the committee secretariat or, in the case of Estimates and similar inquiries, by ascertaining from the committee secretary or from Hansard and other sources the issues that are likely to be of interest to committee members. Officers who have not previously attended committee hearings should receive briefing on the requirements, and senior officers should satisfy themselves, so far as possible, that all witnesses are capable of giving evidence creditably.

Consultation with Ministers

2.10 As appropriate, witnesses should consult the Minister before a hearing and, if required, the Minister representing in the other House. Examples of the need for such consultation would be in relation to possible claims that it would be in the public interest to withhold certain documents or oral evidence, or requests for the hearing of evidence in camera (see paras 2.22 to 2.38).

Senate resolutions

2.11 Officers appearing before Senate Committees should also make themselves aware of the Senate resolutions relating to the rights of witnesses (r.1.1-r.1.18) and matters which may be treated as a contempt of the Parliament (r.3 and r.6.1-r.6.16)

Preparation of written material

2.12 In the normal course, departments should provide a written statement on which subsequent oral evidence will be based (see r.1.4). In addition, where a committee asks written questions, written replies should be provided. All written material (authorised in accordance with these guidelines) should be sent to the committee secretary.

2.13 When the interests of several departments are involved, adequate consultation is to take place in preparing material and making arrangements for witnesses to attend.

Clearance with Minister

2.14 Submissions should be cleared to appropriate levels within the department, and normally with the Minister, in accordance with arrangements approved by the Minister(s) concerned.

Matters of policy

2.15 Such submissions:

- (a) should not advocate, defend or canvass the merits of government policies (including policies of previous Commonwealth governments, or State or foreign governments);
- (b) may describe those policies and the administrative arrangements and procedures involved in implementing them;
- (c) should not identify considerations leading to government decisions or possible decisions, in areas of any sensitivity, unless those considerations have already been made public or the Minister authorises the department to identify them; and

- (d) may, after consultation with the Minister, and especially when the Government is encouraging public discussion of issues, set out policy options and list the main advantages and disadvantages, but should not reflect on the merits of any judgement the Government may have made on those options or otherwise promote a particular policy viewpoint.

2.16 In relation to the matters in para 2.15(a) above, the proper course is for Ministers to make written submissions, to appear personally, to arrange for Ministers representing them to appear personally, or to invite committees to submit questions on policy issues in writing.

2.17 In relation to para 2.15(c), the normal course is for Ministers to canvass the material in these categories, but if departments are to canvass such material, they should clearly bring it to the Minister's attention when seeking clearance for the submission.

Requests for more time to prepare evidence

2.18 The Minister (or the department on his or her behalf) may ask the committee for more time to prepare evidence, if the notice is considered insufficient. The Senate resolutions provide for a witness to be given reasonable notice and an indication of the matters expected to be dealt with (r.1.3).

Conduct during hearings

General Principles

2.19 As described above (para 1.1), it is intended, subject to the application of certain necessary principles, that there be the freest possible flow of information between the public service, the Parliament and the public. To this end, officials should be open with committees and if unable or unwilling to answer questions or provide information should say so, and give reasons. It is also, of course, incumbent on officials to maintain the highest standards of courtesy in their dealings with parliamentary committees.

2.20 These guidelines, and particularly paras 2.15 and 2.32-2.36, should be read in the context of the Freedom of Information Act 1982 (the FOI Act). The Act establishes minimum standards of disclosure of documents held by the Commonwealth. It is not, however, a code governing release of documents or information generally as there are many other means of obtaining information from Government (e.g. press releases, annual reports, etc.). Any material which would not be exempt under this legislation should (with the knowledge of the Minister in sensitive cases or where the Minister has a particular interest or has been involved) be produced or given, on request, to a parliamentary committee. Moreover, it may be in the public interest to provide to the committee a document or information for which exemption would normally be claimed under the Act. The exemptions in the Act should therefore be viewed from the perspective of the proper role and functions of the Parliament.

2.21 So far as relevant, the guidelines in paras 2.12-2.18 above relating to written material apply also to oral evidence.

Limitations upon officials' evidence

2.22 There are three main areas in which officials need to be alert to the possibility that they may not be able to provide committees with all the information they seek, or may need to request restrictions on the provision of such information. These are:

- (a) matters of policy;
- (b) public interest immunity; and
- (c) confidential material where in camera evidence is desirable.

The conduct of official witnesses in relation to these areas is described in detail below (paras 2.25-2.38).

Clarification or amplification of evidence

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

Questions about other departments' responsibilities

2.24 It is also important that witnesses should take care not to intrude into responsibilities of other departments and agencies (see also para 2.13). Where a question falls within the administration of another department or agency, an official witness may request that it be directed to that department or agency or be deferred until that department or agency is consulted.

Matters of policy

2.25 The role of an official witness is not to comment on policy but to speak to any statement provided to the committee and to provide factual and background material to assist understanding of the issues involved. The detailed rules applying to written submissions (para 2.15) also apply to oral evidence. Note, however, that such restrictions do not necessarily apply to statutory officers (see para 2.49).

2.26 The Senate resolutions provide that "An officer of a department of the Commonwealth or of a State shall not be asked to give opinions on matters of policy, and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a Minister" (r.1.16). The resolutions also prescribe the procedure by which a witness may object to answering "any question put to the witness" on "any ground" (r.1.10). This would include the ground that the question requires the witness to give an opinion on a matter of policy contrary to r.1.16. In such a situation an officer may ask the person chairing the committee to consider whether questions which fall within the parameters of policy positions (outlined in para 2.15) are in order. Moreover, the resolutions provide scope for a witness to make a statement about matters of concern to the witness in pre-hearing discussions before appearing at the committee hearing (r.1.5).

2.27 If an official witness is directed to answer a "policy" question, and has not (in line with para 2.17) previously cleared the matter with the Minister, the officer should ask to be allowed to defer the answer until such clearance is obtained. Alternatively, it may be

appropriate for the witness to refer to the written material provided to the committee and offer, if the committee wishes, to seek elaboration from the Minister; or to request that the answer to a particular question be reserved for submission in writing.

Public interest immunity

Claims to be made by Ministers

2.28 Claims that information should be withheld from disclosure on grounds of public interest (public interest immunity) should only be made by Ministers (normally the responsible Minister in consultation with the Attorney-General and the Prime Minister).

2.29 As far as practicable, decisions to claim public interest immunity should take place before hearings, so that the necessary documentation can be produced at the time. The normal means of claiming public interest immunity is by way of a letter from the Minister to the committee chairman. The Attorney-General's Department should be consulted on appropriateness of the claim in the particular circumstances and the method of making the claim.

2.30 As a matter of practice, before making a claim of public interest immunity, a Minister might explore with a committee the possibility of providing the information in a form or under conditions which would not give rise to a need for the claim (including on a confidential basis or in camera, see paras 2.35-2.36).

Matters arising during hearing

2.31 If an official witness, when giving evidence to a committee, believes that circumstances have arisen to justify a claim of public interest immunity, the official should request a postponement of the evidence, or of the relevant part of the evidence, until the Minister can be consulted.

Scope of public interest immunity

2.32 Documents - or oral evidence - which could form the basis of a claim of public interest immunity may include matters falling into the following categories that coincide with some exemption provisions of the FOI Act:

(a) material the disclosure of which could reasonably be expected to cause damage to:

- (i) national security, defence, or international relations; or
- (ii) relations with the States;

including disclosure of documents or information obtained in confidence from other governments;

(b) material disclosing any deliberation or decision of the Cabinet, other than a decision that has been officially published, or purely factual material the disclosure of which would not reveal a decision or deliberation not officially published;

(c) material disclosing any deliberation of or advice to the Executive Council, other than a document by which an act of the Governor-General in Council was officially published;

- (d) material disclosing matters in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place in the course of, or for the purpose of, the deliberative processes involved in the functions of the Government where disclosure would be contrary to the public interest;
- (e) material relating to law enforcement or protection of public safety which would, or could reasonably be expected to:
 - (i) prejudice the investigation of a possible breach of the law or the enforcement of the law in a particular instance;
 - (ii) disclose, or enable a person to ascertain the existence or identity of a confidential source or information, in relation to the enforcement or administration of the law;
 - (iii) endanger the life or physical safety of any person;
 - (iv) prejudice the fair trial of a person or the impartial adjudication of a particular case;
 - (v) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or
 - (vi) prejudice the maintenance or enforcement of lawful methods for the protection of public safety; and
- (f) material subject to legal professional privilege.

It must be emphasised that the provisions of the FOI Act have no actual application as such to parliamentary inquiries, but are merely a general guide to the grounds on which a parliamentary inquiry may be asked not to press for particular information, and that the public interest in providing information to a parliamentary inquiry may override any particular ground for not disclosing information. For a more detailed understanding of the above exemption provisions, reference should be made to the FOI Act and to separate guidelines on its operation issued by the Attorney-General's Department.

2.33 In addition the following considerations may affect a decision whether to make documents or information available:

- (a) secrecy provisions of Acts: Attorney-General's Department should be consulted when occasions involving such provisions arise; and
- (b) court orders or subjudice issues : where the provision of information would appear to be restricted by a court order, or where the question of possible prejudice to court proceedings could arise, the Attorney-General's Department should be consulted although decisions on the application of the subjudice rule are for the committee to determine, not witnesses.

Classified documents

2.34 Documents, and oral information relating to documents, having a national security classification of 'confidential', 'secret' or 'top secret' would normally be within one of the categories in para 2.32, particularly para 2.32(a). Before producing a document bearing such a classification, an official witness should seek declassification of the document. (Note that it does not follow that documents without a formal security classification may not be the subject of a claim of immunity. Nor does it follow that classified documents may not in any circumstances be produced. Each document should be considered on its merits and, where classified, in consultation with the originator.)

In camera evidence

2.35 There may be occasions when a Minister (or, on his or her behalf, the departmental Secretary) would wish, on balancing the public interests involved, to raise with the committee the possibility of an official producing documents or giving oral evidence in camera, and on the basis that the information be not disclosed or published except with the Minister's consent (see r.1.7, r.1.8 and r.2.7). It should be noted that Estimates Committees have no power to take evidence in camera or to treat documents submitted to them as in camera evidence.

Matters arising during hearing

2.36 If, when giving evidence to a committee, an official witness believes that circumstances have arisen to justify requesting that evidence be heard in camera, the official should make such a request if the possibility has been foreshadowed with the Minister or should ask for the postponement of the evidence or the relevant part of the evidence until the Minister can be consulted. (The Senate resolutions provide that "A witness shall be offered, before giving evidence, the opportunity to make application, before or during the hearing of the witness's evidence, for any or all of the witness's evidence to be heard in private session, and shall be invited to give reasons for any such application. If the application is not granted, the witness shall be notified of reasons for the decision." (See r.1.7 and also r.1.8 relating to the publication of evidence given in camera.)

2.37 These circumstances might include cases where:

- (a) although a claim of public interest immunity could be justified, the Minister considers that the balance of public interest lies in making information available to the committee;
- (b) while a claim of immunity may not be appropriate, other social considerations justify the committee being asked to take evidence privately. Examples, which parallel other exemption provisions in Part IV of the FOI Act, are evidence the public disclosure of which would:
 - (i) affect law enforcement or protection of public safety;
 - (ii) have a substantial adverse effect on financial or property interests of the Commonwealth;
 - (iii) prejudice the attainment of the objects or effectiveness of procedures or methods for the conduct of tests, examinations or audits of a Commonwealth agency;

- (iv) have a substantial adverse effect on the management or assessment of personnel, or on the proper and efficient conduct of the operations of a Commonwealth agency including the conduct by the Commonwealth of industrial relations;
 - (v) unreasonably disclose information relating to the personal affairs of any person. Note also that the Senate resolutions provide that a committee may consider taking in camera evidence reflecting adversely on a person (see r.1.11-r.1.13, r.2.1-r.2.3). The Privacy Act 1988, in particular Part III which explains Information Privacy Principles, is also relevant;
 - (vi) reveal business affairs, including trade secrets or other commercially sensitive information;
 - (vii) reasonably be expected to have a substantial adverse effect on the management of the economy or on the conduct of business generally; or
 - (viii) disclose material obtained in confidence;
- (c) similar or identical evidence has been previously given in camera to other hearings of the committee or other committees of the Parliament and has not been made public.

Committee requests for evidence off the record

2.38 An official who is asked by a committee to give evidence 'off the record', unless this refers to evidence given in camera or evidence of which there is to be no transcript taken, should appreciate that technically there is no such category as 'off the record' evidence which has any special protection or status. In the event an official is asked to give evidence 'off the record', however, he/she should request a postponement until the Minister can be consulted, unless the possibility has been clearly foreshadowed with the Minister.

Protection of submissions and witnesses

Parliamentary privilege

2.39 The act of submitting a document to a parliamentary committee is protected by parliamentary privilege: Parliamentary Privileges Act 1987, paragraph 16(2)(b). Any publication of the submission other than to the committee, however, is protected by parliamentary privilege only if that publication takes place by or pursuant to the order of the committee, in which case the content of the document is also protected: paragraph 16(2)(d) of the Act. The protection of parliamentary privilege means that a person cannot be sued or prosecuted in respect of the act or the material protected, nor can that act or material be used against a person in legal proceedings. The unauthorised disclosure of a document or evidence submitted to a parliamentary committee, that is, a disclosure not authorised by the committee or the House concerned, may be treated as a criminal offence under section 13 of the Act or as a contempt (r.6.16.).

Contempt of the Parliament

2.40 It is an offence against s.12(1) of the Parliamentary Privileges Act for a person, by fraud, intimidation, force or threat, by the offer or promise of any inducement or benefit, or by other improper means, to influence another person in respect of any evidence given or to be given before a House of the Parliament or a committee, or to induce another person to

refrain from giving any such evidence. It is also an offence, under s.12(2) of that Act, for a person to inflict any penalty or injury upon, or deprive another person of any benefit, any person on account of the giving or proposed giving of any evidence, or of any evidence given or to be given, before a House or a Committee. It should be noted that the existence of s.12 of the Parliamentary Privileges Act does not prevent imposition by a House of a penalty (see s.12(3)). In particular, those kinds of conduct are also punishable as a contempt by the Senate (r.6.10 and r.6.11 respectively) or the House of Representatives.

Self incrimination

2.41 In general a witness cannot refuse to answer a question or produce documents on the ground that the answer to the question or the production of documents might incriminate the witness. The exceptions to this are witnesses appearing before the Public Accounts Committee or the Public Works Committee (see s.19 of the Public Accounts Committee Act, s.25 of the Public Works Committee Act and para 2.6). In such cases parliamentary privilege protects a witness against only that evidence itself being used against the witness outside the Parliament; (for example, as evidence in proceedings before the courts). A witness may request the committee to take the evidence in camera in those circumstances (see r.1.7 and r.1.8). The Senate resolutions also outline a procedure for considering claims by a witness that he or she not answer a question on grounds of self-incrimination (r.1.10 and r.2.5).

Access to counsel

2.42A witness may apply to have assistance from counsel in the course of a hearing. In considering such an application, a committee shall have regard to the need for the witness to be accompanied by counsel to ensure the proper protection of the witness. If an application is not granted, the witness shall be notified of reasons for that decision (see r.1.14). If an application is granted, the witness shall be given reasonable opportunity to consult general counsel during a committee hearing (see r.1.15).

2.43 In normal circumstances officials should not need counsel when appearing before parliamentary committees. Should the need arise, however, the Attorney-General's Department should be consulted.

Correction of Evidence

2.44 After perusing the record of their evidence, official witnesses should propose for the committee's consideration any necessary corrections for incorporation or noting in the published record. Where these affect the substance of evidence previously given, it may be necessary to seek the agreement of the committee on the way in which the correction should be made, e.g. by tendering a subsequent statement. The Senate resolutions provide that "Reasonable opportunity shall be afforded to witnesses to make corrections of errors of transcription in the transcript of their evidence and to put before a committee additional material supplementary to their evidence" (r.1.17).

2.45 Also, if a witness believes, after perusing the record, that he or she has omitted some relevant evidence, the witness should, having consulted with the Minister (or departmental Secretary), seek leave of the committee to lodge a supplementary statement or to give further oral evidence. All supplementary written material (authorised in accordance with these guidelines) should be forwarded to the committee secretary.

Publication of evidence

2.46 Evidence provided to committees in a public hearing is normally published in the form of a Hansard record.

2.47 Authority for the publication of evidence, whether taken in public or in camera, is vested in Parliamentary committees by virtue of s.2(2) of the Parliamentary Papers Act 1908. Evidence taken in camera is confidential and its publication without a committee's consent constitutes a contempt (see s.13 of the Parliamentary Privileges Act 1987 and r.6.16.). Note, too, that s.46 of the FOI Act provides for documents to be exempt if disclosure would infringe parliamentary privilege.

Proposals to publish in camera evidence

2.48 If a committee seeks an official witness's concurrence to publish the witness's in camera evidence, he or she should ask the committee to delay the decision to enable the witness to consult the Minister or the departmental Secretary. A committee will not normally authorise the publication of in camera evidence without the concurrence of the witness, although such concurrence is not a binding requirement (see r.1.8).

Official witnesses from statutory authorities

2.49 Members of authorities which have statutory public information and education roles clearly are able to express views on the policy responsibilities of their authorities. However, care should be taken to avoid taking partisan positions on matters of political controversy. In other respects these guidelines should be followed as far as is relevant including in relation to claims of public interest immunity (see para 2.28).

Appearance in a 'personal' capacity

2.50 There is no intention for there to be any restriction on officers appearing before parliamentary committees in their 'personal' capacity. An officer so called, however, should pay heed to the guidelines relating to public comment contained in the Guidelines on Official Conduct of Commonwealth Public Servants (July 1987). As the guidelines emphasise, it is particularly important for senior officials to give careful consideration to the impact, by virtue of their positions, of any comment they might make. Indeed heads of agencies and other very senior officers need to consider carefully whether, in particular cases, it is possible for them realistically to claim to appear in a 'personal' rather than an 'official' capacity, particularly if they are likely to be asked to comment on matters which fall within or impinge on their area of responsibility. An officer who is appearing before a committee in a personal capacity should make it clear to the committee that the officer's appearance is not in an official capacity.

Party committees

3.1 It is quite appropriate for officials, subject to ministerial authorisation, to make themselves available to brief party committees to assist them in understanding the technical and factual background to government policies and proposals, including details and/or explanations of proposed legislation. Departmental officials will not be expected, or authorised, to express opinions on matters of a policy or party political nature (see paras 2.15 and 2.25). The guidelines for submissions to and appearances before parliamentary committees apply to briefing of party committees, subject to paras 3.2-3.7 below.

3.2 Committee requests for such briefing should be directed to the Minister concerned. It will also be open to Ministers to initiate proposals for briefing of committees, where they consider this to be desirable.

3.3 Where considered appropriate or desirable, Ministers may elect to be present at discussions with Government party committees, to deal with questions of a policy or party political nature.

3.4 Where the Minister does not attend the committee proceedings, officials should keep the Minister informed of the nature of the discussions and of any matters the officials could not resolve to the committee's satisfaction.

3.5 Party committees do not have the powers or privileges of parliamentary committees. Consequently officials appearing before them do not have the protection afforded to witnesses appearing before parliamentary committees (see paras 2.39 and 2.41). Party committee hearings, however, are not generally held in public.

Individual members of Parliament

4.1 Members of Parliament usually request information through the responsible Minister, but direct approaches to officials for routine factual information, particularly on constituency matters, are also traditional and appropriate. When a request amounts to no more than a request for readily available factual information, the information should obviously be provided, although depending on the nature or significance of a request, an official may judge it appropriate to inform the departmental Secretary of the request and response. Ministers should be informed of any matter which is likely to involve them.

4.2 There may be other occasions where a Member of Parliament's request raises sensitive issues. For example, where expressions of opinion are sought on government policies or alternative policies, as distinct from explanation of existing policies. Officials will not be expected or authorised to express opinions on government policies, policy options or matters of a party political nature. Information provided may, however, include details of administrative arrangements and procedures involved in the implementation of approved policies or legislation.

4.3 If a Member of Parliament seeks expressions of opinion on government policies or policy options, it would be appropriate to suggest that the Member pursue the matter with the Minister. Similar action would be appropriate if a request raised other issues of a sensitive nature, or where the answering of a request would necessitate the use of substantial resources of the department or authority.

4.4 Care should be taken to avoid unauthorised disclosure of classified or otherwise confidential information - for example, where a breach of personal or commercial privacy could be involved.

4.5 Where an official considers that the terms of a request would require going beyond the authorised scope of the above arrangements, the official should so indicate to the Member, and would be at liberty to raise the matter with the departmental Secretary and the Minister and, if desired, with the Public Service Commission.

Special arrangements for pre-election consultation with officials by the Opposition

4.6 On 5 June 1987 the Government tabled in the Parliament specific guidelines relating to consultation by the Opposition with officials during the pre-election period. These guidelines, which are almost identical with guidelines first tabled on 9 December 1976, are as follows:

- (i) The pre-election period is to date from three months prior to the expiry of the House of Representatives or the date of announcement of the House of Representatives election, whichever date comes first. It does not apply in respect of Senate elections only.
- (ii) Under the special arrangement, shadow Ministers may be given approval to have discussions with appropriate officials of government departments. Party leaders may have other Members of Parliament or their staff members present. A departmental Secretary may have other officials present.
- (iii) The procedure will be initiated by the relevant Opposition spokesperson making a request of the Minister concerned who is to notify the Prime Minister of the request and whether it has been agreed.
- (iv) The discussions will be at the initiative of the non-government parties, not officials. Officials will inform their Ministers when the discussions are taking place.
- (v) Officials will not be authorised to discuss government policies or to give opinions on matters of a party political nature. The subject matter of the discussions would relate to the machinery of government and administration. The discussions may include the administrative and technical practicalities and procedures involved in implementation of policies proposed by the non-government parties. If the Opposition representatives raised matters which, in the judgement of the officials, sought information on government policies or sought expressions of opinion on alternative policies, the officials would suggest that the matter be raised with the Minister.
- (vi) The detailed substance of the discussions will be confidential but Ministers will be entitled to seek from officials general information on whether the discussions kept within the agreed purposes.

Appearances before the bar of a House of Parliament

5.1 It would be only in exceptional circumstances that an official would be summoned to the bar of a House of the Parliament and each case would need individual consideration.

5.2 As a general rule, it would be appropriate for these guidelines to be followed insofar as they apply to the particular circumstances.

Non-parliamentary public inquiries (including royal commissions and speeches)

6.1 The guidelines for submissions to and appearances before parliamentary committees generally apply to submissions to and appearances before other public inquiries, and to the preparation and presentation of speeches by officials in their official capacity.

Speeches

6.2 Subject to these guidelines, officers, other than those employed in areas where national security or other reasons demand confidentiality, should be prepared to make themselves available to attend and address conferences in their areas of professional expertise. Speeches in such circumstances should aim to provide the necessary factual information and analytical material to promote informed public discussion. Such activities should be regarded as part of the normal interchange of information between government and community groups.

6.3 The Minister may decide to authorise the departmental Secretary to clear material for speeches. Subject to ministerial guidance, the Secretary is responsible for instituting appropriate departmental rules. Officials will often also find it necessary to speak in their official capacity without having the opportunity to clear the substance of their comments (for example, in open discussions at public seminars). In such cases officials should heed the rules laid down by the departmental Secretary and the Guidelines on Official Conduct of Commonwealth Public Servants concerning public comment by public servants. In particular, they should avoid taking partisan positions on policy issues or matters of public controversy.

Foreign Service

6.4 Heads of Australian diplomatic or consular posts and senior officials serving abroad have the responsibility in countries to which they are accredited to explain, advocate or defend the Government's international and domestic policies through public speeches, conferences, media enquiries, appearances before host government parliamentary committees, etc. It may not always be possible for officers to obtain ministerial or departmental clearance. It is expected, however, that public comment will be consistent with authorised policies in all respects.

Royal Commissions and bodies with Royal Commission powers

6.5 Officials appearing before Royal Commissions established by the Commonwealth should take note of the provisions of the Royal Commissions Act 1902. The categories of evidence enumerated in para 2.32 above are also appropriate to claims of public interest immunity before a Commonwealth Royal Commission. The circumstances in which the Commission might be asked to hear evidence in camera are also likely to be the same as those listed at para 2.37 above.

6.6 An official appearing before a Commonwealth Royal Commission or similar body may not refuse to answer a question (or to produce a document or other item) on the ground that the giving of the answer or the production of the document or item might tend to be self-incriminatory. This rule does not apply where an official has been charged with an offence and the charge has not been finally dealt with by a court or otherwise disposed of.

6.7 Where guidance is required regarding counsel for officials - including about legal aid - advice should be sought from the Attorney-General's Department.

State inquiries (parliamentary and other)

6.8 Where additional guidance is required regarding appearances before State inquiries, advice should be sought from the Attorney-General's Department. Such advice should also be sought where a claim of public interest immunity may be under consideration.

Courts and tribunals

6.9 Where officials require further guidance or counsel in respect of their appearance before and giving evidence to courts of law and tribunals - particularly concerning possible claims of public interest immunity - advice should be sought from the Attorney-General's Department.