

Attendance at committee meetings by visitors

The issue

- 3.1 In undertaking their work House committees hold both public and private meetings. Private meetings allow the committee to deliberate in private on matters such as report consideration, to receive private briefings and to take evidence from witnesses in private.
- 3.2 The revised House of Representatives standing orders introduced on 16 November 2004 (amended on 8 February 2005) appear to have inadvertently created some confusion whether committees can admit visitors to their private meetings. This issue is examined with a view to eliminating the confusion.
- 3.3 In revising the standing orders it was not the Procedure Committee's intention to exclude visitors when a committee is holding all private meetings.
- 3.4 The principle the Procedure Committee is seeking is for a committee or subcommittee to have the power to decide who may be present at any of its meetings with the exception of deliberative meetings or private hearings (formerly called in camera hearings).

Current practice

- 3.5 The relevant House standing orders compared with the former standing orders are shown in Table 3.1 with keywords italicised. The new standing orders differ from the former standing orders in that they refer to *private meetings*.

Table 3.1 Current practice

| Current standing order | Former standing order |
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| <p>235 <i>Proceedings and sittings of committee</i></p> <p>(a) A committee or a subcommittee may conduct proceedings using any means approved by the House and in the following manner:</p> <ul style="list-style-type: none"> (i) in private meeting; (ii) by hearing witnesses, either in public or in private; and (iii) in the form of any other meeting, discussion or inspection conducted under the practice of committees of the House. | |
| <p>240 <i>Admission of visitors (replaces former standing order 344)</i></p> <p>(a) A committee or a subcommittee may admit visitors when it is examining a witness or gathering information in other proceedings.</p> <p>(b) All visitors must leave if:</p> <ul style="list-style-type: none"> (i) the Chair asks them to; (ii) the committee or subcommittee resolves that they leave; or (iii) the committee or subcommittee is conducting a <i>private meeting</i>. | <p><i>Former standing order 344*</i></p> <p>When a committee or subcommittee is examining a witness, or engaged in other proceedings for the purpose of gathering information, visitors may be admitted. They shall withdraw if requested by the chair or if the committee or subcommittee resolves for their withdrawal. All visitors must withdraw when the committee or subcommittee <i>is deliberating or taking evidence in camera</i>.</p> |

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| <p>241 Admission of other Members (replaces former standing order 345)</p> <p>Other Members, who are not members of the committee, may be present when a committee or subcommittee is examining a witness, or gathering information in other proceedings. Other Members must leave when the committee or subcommittee is conducting a <i>private meeting</i>, or if the committee or subcommittee resolves that they leave.</p> | <p>Former standing order 345</p> <p>Members of the House may be present when a committee or subcommittee is examining a witness, or engaged in other proceedings for the purpose of gathering information, but shall withdraw if the committee or subcommittee so resolves. They shall withdraw when the committee or subcommittee <i>is deliberating or taking evidence in camera</i>.</p> |
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Note: * Standing Order 344 was subject to review by the Procedure Committee in relation to the power of a member to require that visitors withdraw. The Procedure Committee recommended that SO 344 be modified to prevent this. See: House of Representatives Standing Committee on Procedure. June 2003. *Sessional Order 344*. Department of the House of Representatives, Canberra, ix 20p.

Source Clerk of the Department of the House of Representatives, submission, pp 12-13.

- 3.6 For comparative purposes the equivalent Senate SO 36 set out below addresses both public and private meetings.

Senate SO 36

Persons other than members and officers of a committee may attend a public meeting of a committee but shall not attend a private meeting except by express invitation of the committee, and shall always be excluded when the committee is deliberating.

Areas of clarification

- 3.7 The former wording of SO 240 only excluded visitors from private meetings when the committee or subcommittee was deliberating or taking evidence in camera. The substitution of the broader term 'private meeting' to cover the narrower terms 'deliberating or taking evidence in camera' means that the option of having visitors at some private meetings has been removed.
- 3.8 The Clerk's submission notes that under SO 240 it is not clear how to handle visitors' attendance at private briefings (a form of private meeting) which are used by committees to gather information

informally on an inquiry or to brief the committee on topics which are not associated with a particular inquiry.¹

- 3.9 While SO 240(a) states that 'A committee or subcommittee may admit visitors when it is examining a witness or gathering information in other proceedings.', SO 240(b) states that 'All visitors must leave if:...(iii) the committee or subcommittee is conducting a private meeting.'
- 3.10 Under SO 241 there is similar ambiguity in relation to the admission of other Members.
- 3.11 In addition, under SO 240 the committee or subcommittee 'admits' visitors but under SO 241 other Members 'may be present'. The Clerk's submission suggests that the words 'may be present' may imply that other Members may be present on their own initiative without the invitation from the committee.²
- 3.12 The Clerk's submission states that:

...It would seem clear that the principle be that the committee should have the power to decide who may be present at any of its meetings with the exception of deliberative meetings or private (in camera) hearings. Having people who are not members or staff of the committee (or witnesses) at either of these types of meetings increases the risk of a breach of privilege occurring and has the potential to threaten the integrity and credibility of the committee system.³

Conclusion

- 3.13 As suggested by the Clerk's submission⁴ the Committee believes that the uncertainty surrounding whether visitors and Members can attend private meetings of a committee or subcommittee can be removed by:
- omitting the reference to the general term *private meeting* from standing orders 240 and 241 and replacing it with *deliberating or hearing witnesses in private*; and

1 Clerk's submission, p 14.

2 Clerk's submission, p 14.

3 Clerk's submission, p 14.

4 Clerk's submission, p 14.

- in standing order 241 in the phrase 'Other Members...may be *present*' removing the word '*present*' and substituting '*admitted*' so that the initiative is with the committee to determine whether it will permit the attendance of other Members.

Recommendation

Recommendation 3

- 3.14 The Committee recommends that standing orders 240 and 241 be amended (as indicated by underlining) as follows:

240 Admission of visitors

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

241 Admission of other Members

Other Members, who are not Members of the committee, may be admitted when a committee or subcommittee is examining a witness, or gathering information in other proceedings. Other Members must leave when the committee or subcommittee is deliberating or hearing witnesses in private, or if the committee or subcommittee resolves that they leave.

Margaret May MP

Chair

10 November 2005

