

Inquiry into procedures relating to House committees

Submission to the Procedure Committee by the Clerk of the House

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1. Presentation of committee reports and time allocated to committee work in the House and Main Committee

Background

For many years Members have expressed concern about the limited time available to speak to committee reports when they are presented or within a short time of presentation when the issues are still current. Members devote a great deal of time to committee inquiries and, on presentation, may be given a very limited time or no time at all to discuss the committee's work in the House. Additional time to debate a committee report may be provided in the Main Committee but it is not uncommon for this to occur a significant interval after presentation when the immediacy of the issues may have diminished.

The Procedure Committee has considered these matters and made various recommendations over the years since the House first allocated a dedicated time for presenting committee and delegation reports to the House.

Prior to 1987 committee reports were presented in an ad hoc way when other business was not before the House. This arrangement was extremely flexible but meant that each committee needed to negotiate for any time to speak to the report with the Government whose business took priority. Following the Procedure Committee's report on "Days and hours and the effective use of the time of the House" and its follow up report¹, the House introduced a regular weekly dedicated period for presentation and debate of committee and delegation reports, private Members' business, Members' 90 second statements and the grievance debate. The timing and structure of this period has been adjusted on numerous occasions since, usually as a result of Procedure Committee consideration, although not always in accordance with the committee's recommendations. Significant points from these earlier reviews are summarised at the end of this section of the submission.

This submission outlines some of the issues around maximising opportunities for adequate debate on committee reports and sets out some options which might be considered. It does not recommend a particular course as each possibility has advantages and trade offs which need to be weighed up by Members.

Current practice

Standing orders 39 and 40, shown below, provide for presentation and debate of committee and delegation reports.

39 Presentation of reports

- (a) Members can present reports of committees or delegations:
 - (i) as agreed by the Selection Committee, following prayers on Mondays; or
 - (ii) at any time when other business is not before the House.
- (b) Members can make statements in relation to these reports:

¹ House of Representatives Standing Committee on Procedure, *Days and hours of sitting and the effective use of the time of the House*, May 1986; and House of Representatives Standing Committee on Procedure, *Improved opportunities for private Members: Proposed sessional orders*, May 1987.

- (i) during the special set period on Mondays (standing order 34); the Selection Committee shall set time limits for statements, of not more than 10 minutes for each member; or
- (ii) at any other time, by leave of the House.
- (c) The Member presenting a report may move without notice, a specific motion in relation to the report. Debate on the question shall be adjourned to a future day.

40 Resumption of debate on reports

- (a) After presentation of reports on Mondays proceedings may be resumed on motions moved in relation to committee and delegation reports on an earlier day.
- (b) The Selection Committee shall set:
 - (i) the order in which motions are to be considered;
 - (ii) time limits for the whole debate; and
 - (iii) time limits for each Member speaking, of not more than 10 minutes.

The timetable and order of business for committee and delegation reports and private Members' business is the responsibility of the Selection Committee. The committee reports its determinations to the House—usually on a Tuesday—in time for its decisions to be published on the Notice Paper of the sitting Thursday before the Monday being considered.

The first period following prayers at 12.30 p.m. on Monday is reserved for the presentation of parliamentary committee and delegation reports. *House of Representatives Practice* states that 'subject to any determination of the Selection Committee, the Member presenting a report and other Members may each speak for a maximum of 10 minutes'.² The Selection Committee often has a range of competing priorities to assess. For example, there can be a number of committees seeking to table reports on the same day with numerous Members seeking speaking time. In this situation, it is not possible for each member to receive the maximum of 10 minutes speaking time. In practice, the total speaking time for each report may, depending on the number of reports being tabled, be only 10 minutes in total or two speakers each with five minutes speaking time.

After presentation of a report in the House and the moving of a motion to take note of the report, the order of the day for the resumption of debate on the motion may be referred to the Main Committee. The party whips manage Main Committee business, not the Selection Committee.

An ongoing concern among Members is that debate in the Main Committee is not always timely and may occur when there is less public interest in the issues.

In 2003-04 there were 68 general purpose standing and joint committee reports (excluding reports from the Joint Standing Committee on Public Works) presented in the House. In the same period, 18 committee and delegation reports were referred to the Main Committee.³

² House of Representatives Practice, 5th ed., 2005, p, 562.

³ Department of the House of Representatives, *Annual Report 2003-04*, 2004, pp. 161-162.

Issues

The fact that the arrangements for presentation and debate on committee reports have been tinkered with so much indicates that finding a system which is flexible enough to meet the varying needs of committees and their members yet is manageable and does not unacceptably interfere with other important business is extremely difficult. As this suggests, the chief issues are:

Variable and unpredictable demand

The number of reports ready for presentation in any sitting week varies from none to, possibly, six or eight. This estimate does not include reports of the Joint Standing Committee on Public Works or the Joint Committee of Public Accounts and Audit which are numerous but presented outside the current Monday timeframe.

The actual number for any one week is usually only known about a week before the proposed presentation, that is, when the Selection Committee meets to consider the program of business for the next sitting Monday. There is a tendency for report presentations to be bunched towards the end of a sitting period as committees endeavour to get their reports finalised before a long adjournment. This can lead to increased demand for time for discussion of committee reports at a time when pressure on other business is also high.

Not all reports warrant the same amount of time dedicated to statements or debate but making judgments on which ones are more important can be problematic.

There may be some merit in committees providing the Selection Committee with planned tabling dates at the beginning of each new inquiry so that the committee can contemplate some strategic planning if other changes are made to improve flexibility. While committee work plans are subject to many changes over the course of an inquiry it might be possible to predict likely bottlenecks reasonably well in advance if the Selection Committee is kept informed of plans.

The Selection Committee has a heavy responsibility in managing the time available for committee and delegation reports and in balancing this with demand for private members' business. Understandably, before allocating time for reports it has sought assurances that they have been adopted formally. Given the nature of the usual sitting pattern, it is quite possible that a report could be adopted perhaps on the Tuesday of a sitting week, but not be presented for almost four weeks. It is obviously very helpful when the Selection Committee is able to accommodate such situations.

Limitations on total sitting time available

The sitting times of the House have been adjusted many times over the years to try to deal with increasing legislative and other workloads and still allow Members adequate time for electorate, committee and other work away from Canberra. The introduction of the Main Committee in 1994 produced a significant increase in time available for debate.

Some options for extending sitting times for the House are included in this paper but these are relatively limited and inflexible. Sitting times of the Main Committee have considerable scope for expansion but there are some issues in relation to using the Main Committee more extensively for committee business especially tabling of reports.

Without an increase in the sitting hours or days the time available for discussion of committee reports can only be increased at the expense of some other types of business, chiefly government business or private Members' business. The current standing orders already encompass flexibility to use private Members' business time to accommodate the tabling of committee and delegation reports but the Selection Committee has demonstrated that it does not favour this approach.

Limitations on business in the Main Committee

The Main Committee is a subordinate body to the House. It is essentially a debating chamber which receives its business from the House and returns it for final approval by the House. The only business which does not originate in the House are statements by Members and papers tabled in association with the statements or with business which has been referred by the House, neither of which require debate or decision. It is considered inappropriate for substantive business to be initiated in the Main Committee. The presentation of a committee or delegation report and the moving of a motion to enable debate to take place, and potentially a decision made, in relation to it would be beyond the scope envisaged for the Main Committee. The House's power to delegate that degree of independence to a subordinate body could be open to question.

In addition, a committee is charged with inquiry and report to the House. Making its report to the Main Committee in place of, or prior to, reporting to the House could be considered a discourtesy to the House.

Perhaps almost simultaneous presentation to the House and further consideration by the Main Committee would resolve many of the difficulties. This would mean the Main Committee meeting on Mondays for committee and delegation report consideration, and possibly private Members' business.

The Main Committee can, and often is, used for the continuation of debate on reports which have already been presented. The issue with this is how quickly the debate can be resumed after the initial tabling and statements in the House. This is a matter for the managers of Main Committee business to negotiate. In 2000 the Procedure Committee recommended a regular meeting of the Main Committee on Wednesday evenings to consider committee and delegation reports and private Members' business under the programming control of the Selection Committee.⁴ This recommendation was not taken up.

The need for regular and predictable sitting times and business programming

It is important for the House to have regular and predictable sitting times and order of business so that Members and others who work, or have dealings, with the Parliament can plan and carry out their work efficiently. This makes it difficult to program the degree of flexibility needed to accommodate the varying time requested for tabling and discussion of committee reports from week to week without intrusions on other business.

Differing views on the timing of debate on committee reports

In one sense the rationale underpinning the timing of debate on a committee report may be viewed as being similar to the rationale for debating a government bill — after a government

⁴ House of Representatives Standing Committee on Procedure, *The Second Chamber: Enhancing the role of the Main Committee*, July 2000, p.53.

bill is presented and the second reading speech explaining the bill is delivered by a Minister the debate is adjourned to give the House time to digest both the bill and the Minister's speech. The appeal of debating a committee report immediately after it is presented and a Chair's tabling speech is made is most relevant to Members who are members of the committee which has just reported. However it is arguable that the rights of other Members of the House are equally important. These other Members may need time to consider the committee's report and the Chair's tabling statement before debating the report. Thus there is an argument that, for the majority of Members of the House (ie those members who were not on the committee and privy to the inquiry or report's formulation), debate on a committee report should occur at a time after the report is presented.

Dovetailing with report-related government motions for certain committees, government imposed deadlines or House imposed deadlines.

Currently it is the practice of the House for certain committees to report at times other than that managed by the Selection Committee. For example the Joint Parliamentary Committee on Public Works (PWC) regularly reports in the afternoon after the MPI on sitting Tuesdays and/or Wednesdays so that a government approval of works motion related to the work reported on by the PWC can be moved the following day (ie Wednesday or Thursday). Thus it is in the Government's interests that PWC reports occur during government business time as it facilitates the orderly management of public works.

Similarly the Government has imposed a 15 day (or 20 day in some cases) deadline for the Joint Standing Committee on Treaties (JSCOT) to report before action is taken that will bind Australia at international law to the terms of the treaty. It is often not practical for the JSCOT to report via the Selection Committee Monday mechanism and thus it often (but not always) reports at other times in order to comply with this government imposed deadline.

In addition there are some cases where the House has imposed a fairly short reporting deadline on a committee making it very difficult for that committee to report via the Monday Selection Committee mechanism. This has been the case with some bills referred to committees for inquiry and an advisory report.

For the above reasons it seems prudent to preserve a degree of flexibility in any revised system to facilitate a range of options for the tabling and debate of committee reports.

Affording House joint committee members opportunities similar to that currently available to Senate joint committee members

One further issue to contemplate is affording House members of joint committees the same tabling flexibility as is currently available to Senate members of joint committees. With little notice joint committees are able to table a report and speak to it on any sitting day in the Senate. Thus when a House member of a joint committee presents its report to the House via the Monday Selection Committee mechanism (eg the Joint Standing Committee on Foreign Affairs, Defence and Trade) it is often very old news as the report has been presented to the Senate a week or more previously. The Senate practice of incorporating tabling speeches is not supported as a way of facilitating extra House tabling opportunities, for the reasons outlined in House of Representatives Practice (5th ed, pp. 490-3).

Options

The following are some options which the committee might consider. Each has disadvantages and no solution is perfect.

1. Increasing the sitting time of the House

Tuesday starting time

- Under the current standing orders, the Tuesday sitting day starts at 2p.m. The parties usually conduct party meetings on Tuesday mornings but these normally finish well before the House meets. The Senate currently meets at 12.30pm on Tuesdays, and party meetings would presumably account for this.
- The Tuesday sitting potentially could start as early as 12.30p.m. providing up to an extra 1 hour 30 minutes. This time could be set aside for tabling of committee and delegation reports, statements in relation to them and debate on motions to take note of committee and delegation reports.
- If there were no (or insufficient) reports for debate then priority could be given to private Members' business with the management of the period being with the Selection Committee.
- Two variations on this proposal might be for government business to take precedence if the time was not required for committee and delegation reports, or for an early meeting time on Tuesday to be optional depending on the need for it. In either of these cases the Selection Committee could include in its report on the proposed program of business for the next week a statement in relation to Tuesday business being either a starting time for the sitting or how much of the initial period on Tuesday has been allocated to presentation and consideration of reports (and how much was available for government business). The House could then endorse the proposal.
- Some advantages of extending the sitting on Tuesday include:
 - A high degree of flexibility without intrusion into other business.
 - An opportunity for reports to be tabled on weeks when Monday is not a sitting day.
 - With this degree of flexibility and time available the committee could also consider bringing PWC, JCPAA and other committee reports not normally tabled on Monday into the Selection Committee process wherever possible.
 - More flexibility for committees in getting their reports printed and ready for tabling.
 - If a regular 12.30pm start time was adopted a slight reduction in the complexity of the sitting timetable would be achieved as Monday and Tuesday would have the same start and finish times.
- Some disadvantages include:
 - Possible intrusion on party business time.
 - If the early sitting is optional—uncertainty for Members and others and increased complexity of managing support services for the variable start time.

- If spare time were given to government business, it might lead to expectations or pressures from government for some control of how much of the time they have access to on any particular day.

Monday starting time

- Under the current order of business, Monday sittings start at 12.30p.m. Members often use Monday mornings for travel to Canberra so it is not feasible to start the sitting at 9am.
- However, it may be possible to start the Monday sitting day a little earlier, say at 11 or 11.30a.m., to provide additional time for presentation of and debate on committee and delegation reports.
- This proposal would provide additional time and keep committee business together in one slot on Monday. It may be difficult for some Members to get to Canberra on time if needed. It would not provide the same degree of flexibility for committees and to cover public holiday Mondays as the Tuesday option. The same issues would arise in determining what to do about the time that was not needed for reports on any particular day.

Thursday finishing time

- The House could continue its sitting on Thursday beyond 4.30pm and use the period between 4.30pm and (say) 7.30pm to further debate committee and delegation reports and private Members business (motions and bills). Possibly an agreement could be reached or the standing orders modified to defer calls for a quorum or a division during this evening period. The Selection Committee could manage this time period and use it mainly for private Members' business (bills and motions) thus freeing up time on Mondays for more timely debate on committee reports presented that day.

2. Changes within the existing order of business

Private Members' business

- Monday sittings between 12.30 and 1.45p.m. are set aside for committee and delegation reports, and private Members' business. Private Members' business is also scheduled for another hour later in the day after question time.
- More time could be provided for debate on committee and delegation reports if the time apportioned for private Members' business was reduced. However the Selection Committee has not favoured this approach.

Grievance debate

- The grievance debate is scheduled on Monday sittings usually running between about 4.35 and 5.55p.m. It is possible that the grievance debate could be moved to the Main Committee (perhaps during a regular Main Committee Tuesday afternoon early evening time slot with a 30 minute period of Members statements beforehand and a 30 minute adjournment debate afterwards) and the resulting time in the House be made available for presentation of and debate on committee and delegation reports. This approach may not find favour with Members.

3. The Main Committee and the Selection Committee

- The Procedure Committee has previously recommended a regular dedicated sitting time of the Main Committee to be managed by the Selection Committee for consideration of orders of the day for private Members' business and committee and delegation reports.⁵ While this recommendation was not adopted on that occasion it may be worth reconsidering.
- Some potential modifications might include:
 - Having the session on Monday or Tuesday afternoon or evening rather than Wednesday. These times are sometimes used for government business in the Main Committee, for example the budget debate. For example on a Monday when a committee report(s) was/were presented to the House between 12.30pm and 1.45pm the Main Committee could meet that day immediately after question time and further debate the committee report(s). The timing of this debate should go some way to satisfying committee members' requests to debate a report on the same day as presentation and at a time in the day before late afternoon media deadlines. The gap between presentation (say) at 12.30pm and Main Committee debate (say) at 3.15pm could be used by a committee for a media conference if it so desired. If the Main Committee established a practice of sitting on Monday to debate reports between (say) 3.15pm and 5.15pm then this would not unduly interfere with current practice for Main Committee Monday late afternoon evening (5.15pm to 9.15pm) budget debate at certain times of the year. A pattern of sitting the Main Committee on Monday afternoon for the purpose of further debating committee reports tabled that day could be established within the current standing orders.
 - While the Main Committee can only consider orders of the day—motions cannot be moved or reports tabled—a mechanism could be devised for Members to move and second their motions in the House without speaking to them. The items could be referred to the Main Committee immediately. The actual debate would then take place in the Main Committee during that known period in the same week. A similar process could be adopted for committee reports.
- As the whips who manage the programming of business in the Main Committee are members of the Selection Committee a practical arrangement for managing this period and the interaction between the House and the Main Committee should be able to be devised.
- While this proposal has some disadvantages as identified in the original report and the government's response, it would provide the opportunity for more substantive debates and timely debates, not only on committee work, but also on private Members' bills and motions.

⁵ *The Second Chamber: Enhancing the role of the Main Committee*, p.53.

Previous inquiries

September 1990 *Greater opportunities for debate on reports from parliamentary committees* – House of Representatives Standing Committee on Procedure

During 1990 the Procedure Committee (the committee) examined the opportunities for Members to debate reports of parliamentary committees. The committee commented that ‘the work of parliamentary committees is a significant part of the work of the House and its individual Members and should be recognised by the provision of adequate time to debate the reports of those committees’.⁶ In particular, the committee noted that it ‘is concerned that the time available for debate on reports from standing and select committees is inadequate and does not allow for substantial debates’.⁷

The committee, in addressing these concerns, proposed that the then standing orders be amended to allow more than two members of the committee to make statements on presentation of a report. In addition, the committee recommended that more time be made available for presentation and debate on committee reports. Under the then order of business, the committee proposed that extending the sitting time on Thursdays was the most appropriate course. The committee recommended that the House meet half an hour earlier at 9.30 a.m. on each sitting Thursday. Following petitions, presentation of, and statements on, reports of parliamentary committees and delegations would take precedence until 10 a.m. The resumption of debate on motions moved in relation to committee and delegation reports presented previously then took precedence from 10 to 11 a.m.

The committee noted that if there were no reports for presentation and if there were not an order of the day for the resumption of debate on motions moved in relation to committee reports then private Members business shall take precedence. This arrangement was intended to ensure that there was some time set aside to continue debate on reports presented earlier but ultimately proved to be not flexible enough to meet the needs of Members.

The committee also discussed the situation in which there is typically a high number of reports to be presented towards the end of a sitting period. The committee in addressing this matter proposed that the Selection Committee be given the discretion to extend the time available for presentation of reports beyond the 10 a.m. on the last two sitting Thursdays of each sitting period.

June 1995 *Time for Review: Bills Questions and Working Hours, Report of the review of procedural changes operating since 21 February 1994*, House of Representatives Standing Committee on Procedure

This report briefly discussed the role of the Main Committee in providing time for debate on committee and delegation reports. The committee noted that while reports from committees were still presented in the House, the ‘option is now available for the committee to request that the report be debated in the Main Committee.’ The committee commented that ‘this means, usually, a substantive debate can take place within two or three days of the

⁶ House of Representatives Standing Committee on Procedure, *Greater opportunities for debate on reports from parliamentary committees*, September 1990, p. 1.

⁷ *Greater opportunities for debate on reports from parliamentary committees*, p. 1.

presentation of the report and Members other than members of the committee can participate in the debate'.⁸

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

The committee, as part of its review, noted that 'a number of submissions are highly critical of the small time allocated to debating reports at the time of their tabling.' The committee acknowledged that the Selection Committee allocates time in an even-handed manner, but it is unavoidable that on many occasions only a nominal allocation of time can be made to a particular report.⁹ The committee recommended that greater priority be given to debating committee reports, and in addition to the time allocated for debate at tabling, because of the limited time available in the House, time should be allocated for debate in the Main Committee commencing that same week.¹⁰

October 1999 *It's your House: Community involvement in the procedures and practices of the House of Representatives and its committees*, House of Representatives Standing Committee on Procedure

The committee, in addition to a range of issues, commented on the time provided for debating committee reports. The committee noted that while making more time available in the House is extremely difficult, there 'is scope though for extension of the meeting times of the Main Committee to provide more opportunities for discussion of committee reports.'¹¹ In addition, the committee recommended 'that the standing orders be amended so that a motion to take note of a committee report automatically stands referred to the Main Committee for consideration and that time be made available for debate in the week following presentation of the report.'¹²

The Government as part of its response to the report did not support this recommendation. The Government stated:

The success of the Main Committee is largely due to its operation as a consensus chamber whereby business is referred only by agreement between the parties....The Government does not consider that standing referral is in fact necessary, as the practice has been that when the Whips have been made aware of Members' desire for more debate time, the majority of reports have been referred to the Main Committee after consultation with the responsible Minister. Referral should remain a matter between Whips who manage the time allocated to, and business conducted in, the Main Committee.¹³

⁸ House of Representatives Standing Committee on Procedure, *Time for Review: Bills, Questions and Working Hours*, June 1995, p. 14.

⁹ House of Representatives Standing Committee on Procedure, *Ten years on: A review of the House of Representatives committee system*, May 1998, p. 21.

¹⁰ *Ten years on: A review of the House of Representatives committee system*, p. 23.

¹¹ House of Representatives Standing Committee on Procedure, *It's your House: Community involvement in the procedures and practices of the House of Representatives and its committees*, October 1999, p. 65.

¹² *It's your House: Community involvement in the procedures and practices of the House of Representatives and its committees*, Recommendation 26, p. 66.

¹³ Government response to the report of the House of Representatives Standing Committee on Procedure: *It's your House*, October 2000, p. 7.

July 2000

The Second Chamber: Enhancing the Main Committee, House of Representatives Standing Committee on Procedure

As part of this inquiry, the committee noted that ‘despite the efforts of the House over many years to accord adequate opportunity for the consideration of committee and delegation reports, some Members still feel that the time allocated in the House for the consideration of committee reports does not reflect the work that has gone into their production’.¹⁴ The committee noted that there were opposing views on the effectiveness of referring committee reports to the Main Committee.

The committee proposed that the then order of business for the Main Committee be amended so that there be a regular sitting of the Main Committee on Wednesday afternoons to debate committee and delegation reports and orders of the day, private Members’ business. In addition, ‘the Selection Committee would manage the allocation of business to the Main Committee for consideration during this period’.¹⁵ These matters were set out in recommendation 8 of the report.

The Government, as part of its formal response to the report, commented that ‘the time currently available in the main Chamber and the Main Committee is sufficient for debate on those matters which it is agreed will be allocated parliamentary business time’.¹⁶ In particular, the Government response noted that ‘debate on matters occurs in the existing hours of the Main Committee by agreement of the Chief Government and Chief Opposition Whips’.

¹⁴ *The Second Chamber: Enhancing the Main Committee*, p. 50.

¹⁵ *The Second Chamber: Enhancing the Main Committee*, p. 53.

¹⁶ Government Response to the Report of the House of Representatives Standing Committee on Procedure, *The Second Chamber: Enhancing the Work of the Main Committee*, p. 4.

2. Attendance at committee meetings by visitors

Introduction

House committees, in the course of their business, conduct a range of meetings including public hearings, private (in camera) hearings, inspections, round table meetings and private meetings. Private meetings provide an opportunity for a committee to deliberate in private on such matters as developing a forward work program and report consideration.

In addition, committees also use private meetings for the purpose of receiving private briefings. These meetings are generally not recorded by Hansard and may not necessarily relate to a specific inquiry. Often a committee may wish to inform itself of a particular matter at an informal meeting. For this reason, private briefings as part of private meetings, are a valuable tool for committees.

The House standing orders have recently been significantly revised to make them more logical, intelligible and readable.¹⁷ This is in addition to a range of amendments occurring over many years which have adjusted the wording of these standing orders, including a significant rewrite of the standing orders relating to committees in 1998.¹⁸

The revised House standing orders introduced on 16 November 2004 (amended on 8 February 2005) may inadvertently have created some imprecision in relation to the conduct of private meetings and the admission of visitors. The following sections outline current and past provisions and suggest a redrafted form of the relevant standing orders to clarify practice in relation to admission of visitors to private meetings.

Current practice

The relevant House standing orders 235, 240 and 241 are shown below. Emphasis has been added to key words.

235 Proceedings and sittings of committee

- (a) A committee or a subcommittee may conduct proceedings using any means approved by the House and in the following manner:
 - (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.

240 Admission of visitors (replaces former standing order 344)

- (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

¹⁷ House of Representatives Standing Committee on Procedure, *Revised Standing Orders: The standing orders of the House of Representatives as last amended on 6 February 2003, redrafted and reorganised*, November 2003.

¹⁸ Following recommendations in *Ten years on: A review of the House of Representatives committee system*.

- (iii) the committee or subcommittee is conducting a *private meeting*.

241 Admission of other Members (replaces former standing order 345)

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 *private meeting*, or if the committee or subcommittee resolves that they leave.

The previous standing orders 344 and 345 are slightly different to the new standing orders in that they do not refer to *private meetings*. For comparison, the previous standing orders are shown below with emphasis added to key words.

Former standing order 344¹⁹

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 *is deliberating or taking evidence in camera*.

Former standing order 345

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 *is deliberating or taking evidence in camera*.

For comparison purposes, it is also useful to note Senate standing order 36 which provides for public and private meetings.

Senate standing order 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.

Discussion

The former House standing orders did not define private meetings but by implication standing orders 344 and 345 permitted committees to conduct private meetings and invite visitors. The only exception was that visitors must withdraw when the committee or subcommittee is deliberating or taking evidence in camera.

Similarly, Senate standing order 36 also provides for committees to invite visitors to private meetings but visitors should always be excluded when the committee is deliberating.

New standing orders 240 and 241 appear to restrict committees from having visitors at private meetings. These standing orders expressly state that Members who are not members

¹⁹ 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. House of Representatives Standing Committee on Procedure, *Sessional Order 344*, June 2003.

of the committee, or visitors, must leave if the committee or subcommittee is conducting a private meeting. It seems unlikely that this was intentional.

Private briefings are a well established practice among committees but they seem to have a foot in more than one camp under SO 235(a). Normally the committee resolves to invite certain visitors to attend and speak to the committee at a private meeting. A transcript of the briefing may or may not be made but no record of the discussion is published by the committee and participants would not be free to discuss it outside the meeting. Commonly the briefing is not associated with a particular inquiry and is therefore not evidence. It is not entirely clear how this type of meeting falls within SO 240. Either:

1. the visitors are attending an information gathering proceeding at the invitation of the committee under SO 240(a); or
2. the committee is in a private meeting and SO240(b) applies but it retains the power to invite visitors despite the standing orders providing that they must leave.

In relation to the presence of other Members at this type of meeting, if situation 1 applies, SO241 would suggest that other Members may be present. However the words ‘may be present’ (as opposed to ‘committee may admit’ in SO 240) possibly imply that they may be present on their own initiative without an invitation from the committee.

Neither of these situations is satisfactory. It would seem clear that the principle should be that a 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.

Options

The current uncertainty over whether Members and visitors can attend private meetings of a committee or subcommittee can be removed if reference to the general term *private meeting* is removed from standing orders 240 and 241 and replaced with *deliberating or hearing witnesses in private*. As the term ‘in camera’ is no longer used in the standing orders, the proposed words are taken from SO235 which distinguishes hearing witnesses in private from a private meeting.

The reference in SO241 to ‘Other Members ... may be present’ has also been altered to place the initiative with the committee to determine whether it will permit the attendance of other Members.

The text of the proposed standing orders is shown below:

240 Admission of visitors (replaced former standing order 344)

- (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 ~~conducting a private meeting~~ *deliberating or hearing witnesses in private*.

241 Admission of other Members (replaced former standing order 345)

Other Members, who are not members of the committee, may be ~~present~~ *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 ~~conducting a private meeting~~ *deliberating or hearing witnesses in private*, or if the committee or subcommittee resolves that they leave.

These minor amendments would ensure that a committee or subcommittee could invite visitors to private meetings.