



THIRTY-NINTH PARLIAMENT

REPORT 32

**STANDING COMMITTEE ON PROCEDURE AND
PRIVILEGES**

**FURTHER REVIEW OF STANDING ORDERS
174 TO 178: COMMITTEE EVIDENCE,
DOCUMENTATION, DELIBERATIONS
AND PROCEEDINGS**

Presented by Hon Barry House MLC (Chair)

October 2014

STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES

Date first appointed: 24 May 2001

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“1. Procedure and Privileges Committee

- 1.1 *A Procedure and Privileges Committee* is established.
- 1.2 The Committee consists of 5 Members, including the President and the Chair of Committees, and any Members co-opted by the Committee whether generally or in relation to a particular matter. The President is the Chair, and the Chair of Committees is the Deputy Chair, of the Committee.
- 1.3 With any necessary modifications, Standing Order 163 applies to a co-opted member.
- 1.4 The Committee is to keep under review the law and custom of Parliament, the rules of procedure of the Council and its Committees, and recommend to the Council such alterations in that law, custom, or rules that, in its opinion, will assist or improve the proper and orderly transaction of the business of the Council or its Committees.”

Members as at the time of this inquiry:

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Hon Adele Farina MLC (Deputy Chair)

Hon Nick Goiran MLC

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CONTENTS

REPORT..... 1

1 REFERENCE..... 1

2 BACKGROUND TO THE REFERENCE 1

3 PUBLIC AND PUBLISHED EVIDENCE 1

4 PRIVILEGE ATTACHING TO EVIDENCE..... 5

5 STATUS OF PROCEEDINGS..... 10

6 MISCELLANEOUS MATTERS 11

7 RECOMMENDATIONS 11

APPENDIX 1..... 12

APPENDIX 2..... 13

REPORT OF THE STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES

IN RELATION TO THE FURTHER REVIEW OF STANDING ORDERS 174 TO 178: COMMITTEE EVIDENCE, DOCUMENTATION, DELIBERATIONS AND PROCEEDINGS

1 REFERENCE

- 1.1 On Wednesday, 2 April 2014, the Procedure and Privileges Committee (“the PPC”) considered Standing Orders 174 to 178 which deal with committee evidence, documentation, deliberations and proceedings. The reference arose as a result of a letter dated 4 December 2013 from the Chair of the Standing Committee on Estimates and Financial Operations (“SCEFO”) to the President in his capacity as Chair of the PPC. A copy of the letter is attached at Appendix 1.

2 BACKGROUND TO THE REFERENCE

- 2.1 Standing Orders 174 to 178 were introduced as a result of the recommendation contained in the review of Standing Orders conducted by the PPC and adopted by the House on 1 December 2011.¹ The Standing Orders the subject of this report are contained in Chapter XV relating to committees.
- 2.2 The letter from the SCEFO raised two principal questions. Firstly, whether there is a distinction between the committee resolving to make evidence public and the act of publishing that evidence and secondly, if there is such a distinction, whether parliamentary privilege applies to evidence that was public, but not yet published.
- 2.3 Due to its concerns and as an interim measure the SCEFO resolved that all evidence assigned a public status by that committee be also deemed to be published.
- 2.4 Given the important issues raised by the letter from the SCEFO, the PPC resolved to inquire into the matter and report to the House. The inquiry also provided the PPC with an opportunity to review the operation of the relevant Standing Orders.

3 PUBLIC AND PUBLISHED EVIDENCE

- 3.1 The PPC considered how the current Standing Orders treat evidence provided to committees.

¹ See PPC Report No. 22 – *Review of the Standing Orders*, Tabled 20 October 2011.

When is evidence Public?

- 3.2 Standing Order 175 deals with the status of evidence. It provides for three categories of evidence:
- a) public evidence;
 - b) private evidence; and
 - c) *in camera* evidence.
- 3.3 The default position in relation to “oral evidence” is that it is public unless the committee or the Council orders otherwise (SO 175(2)). This default position may be altered by the committee making an order in relation to the status of that oral evidence.
- 3.4 Oral evidence ordered by the committee to be taken in private session under SO 175(2) is private pursuant to the committee’s order to take the evidence in private. Oral evidence ordered by the committee to be *in camera* under SO 175(4) may only be made public by an order of the Council. As this Standing Order refers to “any evidence” it will include oral evidence as the definition of evidence in SO 174 includes an oral submission. Under SO 175(3) all evidence, other than oral evidence, remains private unless otherwise ordered by the committee or the Council. This Standing Order must be read subject to SO 175(2) which gives a committee power to order that oral evidence that would otherwise be public under the default position of the Standing Orders be private to the committee.
- 3.5 The status of evidence is therefore determined either by:
- a) the default position ascribed to it under SO 175; or
 - b) by a deliberative act of the committee or the Council in:
 - (i) determining by order the forum in which the evidence is to be received; or
 - (ii) changing by order the default status of the evidence.

When is evidence published?

- 3.6 Publish is defined by the *Macquarie* dictionary as follows:

verb (t) **1.** *to issue, or cause to be issued, in copies made by printing or other processes, for sale or distribution to the public, as a book, periodical, map, piece of music, engraving, or the like.*

2. *to issue to the public the works of (an author).*

3. to announce formally or officially; proclaim; promulgate.

4. to make publicly or generally known.

5. Law (in the law of defamation) to communicate (the defamatory statement in some form) to some person or persons other than the person defamed.

–verb (i) 6. to issue a periodical or the like, especially regularly: they publish on Fridays.

*7. to have one's writing published by a particular publishing house: with whom does she publish?*²

- 3.7 In the context of a House of Parliament, material is published when it is spoken or tabled in the Chamber; which is a public forum. If the printed material was to be distributed outside the Chamber the usual parliamentary method of publication was for the House to order the printing of a paper. Printed papers form part of the official journals of the House. Importantly the order to print a paper provided the House, the printer and certain other defined persons publishing that paper with defences against an action for defamation.³
- 3.8 The Legislative Council's Standing Orders have dispensed with the motion to order that committee reports be printed by deeming that these reports are printed and published by order of the House upon tabling.⁴ Under the Standing Orders, committees may also order the publication of material received during the course of their inquiries. The material published by a committee usually comprises transcripts of oral evidence, written submissions and other miscellaneous evidence. Committee reports and Government responses to report recommendations which are tabled in the House are also published. The usual method of publication is by the documents being made available to the world at large on the committee's internet page.
- 3.9 The PPC noted that under defamation law a defamatory matter is published when it is heard or seen by a third person, not solely the person the subject of the defamation.⁵ In the context of a witness giving oral evidence in public session before a parliamentary committee, defamatory matter is published when the oral evidence containing that defamatory matter is heard by a third person, for example journalists or persons viewing the proceedings in the public gallery.

² Macquarie dictionary online, <https://www.macquariedictionary.com.au> Accessed on 11 July 2014.

³ See *Parliamentary Papers Act 1891*.

⁴ SO 188(2)(a).

⁵ *Pullman v Walter Hill & Co Ltd* [1891] 1 QB 524 ; (1890) 60 LJQB 299

- 3.10 Oral evidence given in a public hearing is published and in the public domain at the time it is given – it is both public and published concurrently. In a practical sense there is no point under SO 175(2) in granting a committee the power to order that oral evidence given in public session be private i.e. “otherwise ordered” as the oral evidence has already been published and is public by reason of the forum in which it was given.⁶
- 3.11 Further, the PPC notes that the transcript of the publically given testimony is not the oral evidence but a record of it under the definition of evidence in SO 174(b). A transcript’s default status under SO 175(3) is private and no committee member or person may disclose or publish this evidence unless otherwise ordered by the committee.
- 3.12 The PPC is of the view that publication of the transcribed record of the publically given oral evidence can occur:
- a) after the committee orders the status of the transcript of evidence to be altered from private to public for the purpose of authorising its publication; or
 - b) pursuant to a standing resolution of the committee that unless otherwise ordered by the committee, transcripts of oral testimony given in public shall be made public for the purpose of authorising its publication after the witness has had a reasonable opportunity to correct any transcription errors.
- 3.13 In a) above, a committee’s order assigning a status of “public” to the evidence provides the authority to publish it. In (b), the authority is provided by the committee’s standing resolution. In either case the evidence becomes public when it is published. Publication will occur when the record or document is:
- a) communicated to a third party; or
 - b) made available for inspection by the public.
- 3.14 Standing Order 225(1) provides:

225. Examination of Records

- (1) *The public records of the Council shall be available for inspection by Members at any time and by other persons during office hours. Copies of extracts of these records may be taken.*

⁶ Though a committee may order that published evidence be expunged from its records.

- 3.15 The PPC is of the opinion that this Standing Order supports the view that a committee order to assign a public status to a document is synonymous with authorising its publication as at that point it becomes a “public record” of the Council and is available for inspection by the public. In these circumstances the publication to the person inspecting the public document is a publication that is authorised by both the committee and a standing resolution of the Legislative Council. The PCC notes that many documents assigned a public status by committees are not available on the internet but are nevertheless available for inspection in accordance with the committee’s authorisation and SO 225(1).
- 3.16 The PPC further notes that a committee’s order assigning a public status to the evidence is usually made during a private meeting. The effect of the order is that the evidence is no longer private to the committee and its publication is authorised. The disclosure or publication of that evidence to a third party by a member of the committee or another person would not usually constitute a breach of privilege even though there may be a period of time between that order and the publication of the evidence on the internet.

4 PRIVILEGE ATTACHING TO EVIDENCE

- 4.1 Whether or not a committee order making evidence public is distinct from the publication of that evidence is immaterial to the protection afforded to the witness who has given the evidence.⁷ This is because the witness while giving the evidence is protected by the absolute privilege of parliamentary privilege. This protection is afforded under the *Bill of Rights 1688* and the *Defamation Act 2005*.⁸

Bill of Rights 1688 (UK)

- 4.2 Article 9 of the *Bill of Rights 1688(UK)* provides:

*That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.*⁹

- 4.3 Article 9 provides the fundamental protection to Members and other persons involved in parliamentary proceedings, including witnesses before a House of Parliament or a

⁷ Evidence may be given by way of oral submission in public, private or *in camera* session; via a written submission, the tabling of documents or by the return of a summons for documents.

⁸ Prior to the *Defamation Act 2005*, statutory protection against an action for defamation against a person who printed or published a report, paper, votes or proceedings by order of a House of Parliament or a committee was provided for in the *Parliamentary Papers Act 1891*. The enactment of this law followed the decision in *Stockdale v Hansard* (1839) 9 Ad & El 1. This case ruled that a resolution of one House, in this case a resolution of the House of Commons, to publish a parliamentary paper which was found to have defamed Mr Stockdale, was not sufficient to alter the law of parliamentary privilege.

⁹ Rendered in modern spelling.

committee of either House or a joint committee of both Houses. It allows the Houses of Parliament freedom to debate whatever matter they wish and for Members and others involved in parliamentary proceedings to say what they like without incurring any legal liability.

- 4.4 Section 1 of the *Parliamentary Privileges Act 1891* applies the privileges of the House of Commons as at 1 January 1989 to the Houses of the Western Australian Parliament. These privileges include those contained in the *Bill of Rights 1688*. The *Parliamentary Privileges Act 1891* provides as follows:

1. Privileges, immunities and powers of Council and Assembly

The Legislative Council and Legislative Assembly of Western Australia, and their members and committees, have and may exercise —

- (a) the privileges, immunities and powers set out in this Act; and*
- (b) to the extent that they are not inconsistent with this Act, the privileges, immunities and powers by custom, statute or otherwise of the Commons House of Parliament of the United Kingdom and its members and committees as at 1 January 1989.*

- 4.5 The PPC notes that witnesses providing evidence in public, private or *in camera* session before a committee have the protection of absolute privilege as the evidence is given during a proceeding in parliament which, under Article 9 of the *Bill of Rights*, cannot be “impeached or questioned in any court or place out of Parliament.” The application of Article 9 of the *Bill of Rights* will not only provide protection against civil proceedings for defamation but also precludes using the evidence that a witness gave to a parliamentary committee as the basis for a criminal conviction.¹⁰

Defamation Act 2005

- 4.6 The evidence of a witness is similarly protected by absolute privilege under section 27 of the *Defamation Act 2005*. An extract as it relates to parliamentary proceedings is set out below:

¹⁰ *R v Wainwright* (1899) WAR 77. But see specific offences against the Legislature in Chapter 9 of *The Criminal Code*. In *R v Smith* (Unreported, District Court of Western Australia, O’Dea J, 21 October 1991) a person was convicted on two counts of contravening s.57 of the Code and sentenced to 16 months imprisonment for knowingly making false statements to the 1988 Legislative Council select committee of privilege.

27. Defence of absolute privilege

- (1) *It is a defence to the publication of defamatory matter if the defendant proves that it was published on an occasion of absolute privilege.*
- (2) *Without limiting subsection (1), matter is published on an occasion of absolute privilege if —*
 - (a) *the matter is published in the course of the proceedings of a parliamentary body, including (but not limited to) —*
 - (i) *the publication of a document by order, or under the authority, of the body;*
 - (ii) *the publication of the debates and proceedings of the body by or under the authority of the body or any law;*
 - (iii) *the publication of matter while giving evidence before the body; and*
 - (iv) *the publication of matter while presenting or submitting a document to the body;*

- 4.7 The rule of law relating to the publication of defamatory matter on a privileged occasion is explained by the editors of *Gatley on Libel and Slander* as follows:

The law recognises that there are certain occasions ('privileged occasions') in which it is for the public benefit that a person should be able to speak or write freely and that this should override or qualify the protection normally given to reputation by the law of defamation. In most cases the protection of privilege is qualified, ie the defence is displaced by 'malice', but there are certain occasions on which public policy and convenience require that a person should be wholly free from even the risk of responsibility for the publication of defamatory words and no action will therefore lie even though the defendant published the words with full knowledge of their falsity and even with the express intention of injuring the claimant.¹¹

- 4.8 The *Defamation Act* provides a defence to the publication of defamatory matter if it was published on an occasion of absolute privilege. This includes where a matter is published in the course of the proceedings of a parliamentary body “while giving evidence before the body”¹² and “while presenting or submitting a document to the

¹¹ *Gatley on Libel and Slander* (10th ed, 2004) 13.1.

¹² s 27(2)(a)(iii).

[parliamentary] body”.¹³ A “parliamentary body” is defined to include “a committee of a house or houses of a parliament or legislature of any country.”¹⁴

4.9 In relation to persons who are not witnesses before committees, the *Defamation Act* protects by absolute privilege documents published by order of a parliamentary committee.¹⁵ This would include a transcript of oral evidence, a written submission and any document provided in answer to a request or summons.¹⁶ Evidence assigned a public status by the committee and published on the committee’s internet page is clearly published by order or under the authority of the committee. Other documents that have been assigned a public status by a committee are available for inspection by the public pursuant to SO 225(1) and a publication of that public document to any person is authorised by that standing resolution.

4.10 The PPC advises that great care should be taken by Members and others in relation to the re-publication of evidence or other committee document that may contain defamatory matter. The authority in SO 175(2) granted to “any Committee Member or person” to disclose or publish oral evidence taken in public to a third party would not attract absolute privilege when the re-publication does not occur during a “proceeding in parliament” or where the protection of absolute privilege is not provided under section 27 of the *Defamation Act*. Other defences however, may be available under the *Defamation Act*, including the publication of:

- a) a fair report of proceedings of public concern;¹⁷ or
- b) a public document or a fair copy of a public document or a fair summary of, or a fair extract from, a public document.¹⁸

4.11 The defence in a), for example, would most commonly be used by a media company and its journalist reporting on a public hearing and publishing defamatory matter contained in those proceedings. The defence in b) would be available in circumstances where the document concerned had been published by order or under the authority of the committee or the Council giving it the status of a “public document” under the Act. The defence of publishing a public document or a fair copy of a public document or a fair summary of, or a fair extract from, a public document is

¹³ s 27(2)(a)(iv).

¹⁴ s 4.

¹⁵ The prior publication of a document which is later published by order of a House or committee is not protected by parliamentary privilege. See *Szwachord v Gallop* (2002) 167 FLR 262.

¹⁶ s 27(2)(a)(i).

¹⁷ s 29.

¹⁸ s 28(1).

only defeated “if, the plaintiff proves that the defamatory matter was not published honestly for the information of the public or the advancement of education.”¹⁹

- 4.12 If a committee assigned a “public” status to a document but did not upload it to the internet or otherwise make the document publically known then notwithstanding that it may be available for inspection under SO 225(1) there may be a small risk that a court could determine that such an order alone did not constitute the publication of the document by order or under the authority of a parliamentary body. As a consequence the document would not satisfy the definition of a “public document” for the purpose of the *Defamation Act*. As a result a Member or other person re-publishing that document containing defamatory matter would not have available to them the defence under section 28 of the *Defamation Act*.
- 4.13 This risk, small as it may be, is a significant incentive for committees to ensure that documents which are assigned a “public” status are published pursuant to or under the authority of that order. The PPC is of the view that a correctly framed order by a committee for publication of a document would eliminate any doubt regarding the availability of the defence under section 28 of the *Defamation Act*. It would also ensure that any documents that have been assigned a “public” status by the committee but not available on the internet are published “by order or under the authority of the [parliamentary] body” so as to attract the absolute privilege accorded to these documents under section 27 of the *Defamation Act*.
- 4.14 The SCEFO has mitigated this risk by resolving that evidence assigned a “public” status by the committee is deemed also to have been published. In the view of the PPC, this would constitute the publication of a document by order, or under the authority, of the parliamentary body so as to satisfy the requirement of section 27 of the *Defamation Act*. The published document would also constitute a “public document” for the purpose of the defence under section 28 of that Act.
- 4.15 The PPC is of the view that it is preferable to eliminate any doubt surrounding whether or not evidence assigned a public status by a committee is also published by or under the authority of that order. This could be achieved by an amendment to the Standing Orders that results in documents assigned a public status by order of a committee being also deemed to be published pursuant to that order. In addition committees should include in any order assigning a public status to a document that the document is also published pursuant to that order.
- 4.16 The PPC notes that the above recommended change to the Standing Orders is consistent with the treatment of committee reports tabled in the House. A committee’s report tabled in the House is ordered to be printed and published by a

¹⁹ s 28(3). The plaintiff would need to show the defendant acted with malice. The defence of honest opinion may also be available under s.31.

deeming provision contained in SO 188(2)(a). This satisfies the provision in the *Defamation Act* which attracts absolute privilege by being “the publication of document by order, or under the authority of the [parliamentary] body”. It also attracts the defences contained in the *Parliamentary Papers Act 1891*.²⁰

5 STATUS OF PROCEEDINGS

5.1 The current SO 178 provides as follows:

178. Status of Proceedings

Committee proceedings shall be conducted in private session, and may be disclosed unless otherwise ordered by the Committee.

5.2 “Proceedings” is currently defined in SO 174 as follows:

“proceedings” are any Committee business that is not “evidence”, “documentation” or “deliberations”.

5.3 This Standing Order was intended to provide some limited flexibility for committee members by permitting them to discuss “proceedings” with third parties without breaching the confidence of the committee. A concern with the Standing Order, however, is that proceedings are currently defined as business that does not constitute a committee’s “evidence”, “documents” or “deliberations”. It is difficult to envisage what matters discussed in a private committee meeting do not fall into one of these three categories with the attendant risk that Members and committee staff may inadvertently commit a breach of privilege by publishing or disclosing documents or matters confidential to the committee. Very fine distinctions of interpretation may be involved in determining whether a particular disclosure is authorised or prohibited by the Standing Orders.

5.4 For the purpose of clarity, the protection of Members and staff, and the confidentiality of private committee meeting discussions, the PPC recommends a return to the traditional practice whereby a Member must obtain the express permission of the committee to discuss with a third party some matter raised during a private committee meeting.

5.5 A resolution by a committee which authorises a Member to discuss matters raised in a private meeting ensures that such a discussion does not breach the confidence of the

²⁰ An action may be stayed if the defendant proves that the report, paper, votes or proceeding was published by order of the Legislative Council or Legislative Assembly (s.2). The defence includes where a copy is published. A defence is also available for the printing of an abstract or extract where it is published *bona fide* and without malice (s.3).

committee and that committee members are aware of what matters will be disclosed. In this respect the practice is consistent with a committee's control of its own inquiry process as well as the related Standing Orders which permit the disclosure of evidence, documents or deliberations in the event that the committee makes such an order.

6 MISCELLANEOUS MATTERS

6.1 The PPC also recommends minor alterations to SOs 174 to 177 to ensure internal consistency. These include:

- a) a change to the definition of "documentation" to "committee material" so as to avoid a possible overlap or confusion with the definition of "evidence" which includes in (b) "any document or record"; and
- b) the inclusion of a committee's draft report in the definition of "committee material" and to ensure that any consideration of committee material constitutes "deliberations" for the purpose of the Standing Orders.

7 RECOMMENDATIONS

7.1 It is recommended that the Standing Orders be amended in the manner set out in Appendix 2.



Hon. Barry House MLC
Chair
23 October 2014

APPENDIX 1

Letter from the SCEFO dated 4 December 2013



STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

Our Ref: ef.all.131204.let.001.bh

Hon. Barry House MLC
President of the Legislative Council and Chair
Procedure and Privileges Committee
Parliament House
PERTH WA 6000

4 December 2013



Dear Mr President

Public and published evidence

As briefly discussed with you previously, the Standing Committee on Estimates and Financial Operations (the Estimates Committee) has been advised by the Clerk Assistant (Committees) that there is a difference between making evidence public, and publishing that evidence. This raises issues in relation to privilege attaching to public, but not published, evidence and also the dissemination of such evidence. To address these issues, the Estimates Committee resolved that, in future, all evidence made public is also deemed to be published.

The Estimates Committee believes that making a distinction between public and published evidence will have consequences for all Committees. The Estimates Committee is also concerned about the ramifications of this advice on decisions made by previous Committees. Given these concerns, the Estimates Committee would like to draw the issue to the attention of the Procedure and Privileges Committee, and suggests the Procedure and Privileges Committee may wish to consider whether amendments to the Standing Orders are required.

Yours sincerely

A handwritten signature in black ink, appearing to read "Ken Travers".

The Honourable Ken Travers
Chair

Note that this document (including any attachments) is privileged. You should only use, disclose or copy the material if you are authorised by the Committee to do so. Please contact Committee staff if you have any queries.

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APPENDIX 2

Recommended amendments to the Standing Orders:

Recommendation 1:

That **Standing Order 174** be repealed and the following Standing Order be substituted –

174. Definitions of Committee Evidence, Committee Material, and Committee Deliberations

For the purposes of these Standing Orders related to Committees –

“Committee evidence” is any information or item provided to, or received by, a Committee, and includes –

- (a) an oral, written or electronic submission; and
- (b) any document or record;

“Committee material” is any correspondence, draft report or information produced by a Committee; and

“Committee deliberations” are a Committee’s consideration of Committee evidence or Committee material.

Recommendation 2:

That **Standing Order 175** be repealed and the following Standing Order be substituted —

175. Status of Committee Evidence

- (1) Committee evidence shall fall within one of 3 categories –
 - (a) public evidence;
 - (b) private evidence; or
 - (c) *in camera* evidence.
- (2) Unless otherwise ordered by the Committee or the Council –
 - (a) oral evidence²¹ given in public session is received as public evidence; and
 - (b) all other Committee evidence is received as private evidence or *in camera* evidence.
- (3) Public evidence may be disclosed or published by any Committee Member or person.
- (4) Private evidence shall not be disclosed or published by any Committee Member or person, unless otherwise ordered by the Committee or the Council.
- (5) *In camera* evidence shall not be disclosed or published by any Committee Member or person unless otherwise ordered by the Council.
- (6) If Committee evidence is private evidence or *in camera* evidence, the Committee shall ensure that the person(s) who provided the evidence to the Committee is advised of the status of the evidence and the effect of that status.

²¹ Oral public evidence does not include the transcript.

Recommendation 3:

That **Standing Order 176** be repealed and the following Standing Order be substituted –

176. Status of Committee Material

- (1) Committee material shall be private to a Committee other than a person to whom the Committee material is provided and shall not be disclosed or published by any Committee Member or any person unless otherwise ordered by the Committee.
- (2) A Committee shall advise a person to whom Committee material is provided of the status of the Committee material and any restriction on the use, disclosure or further publication of that Committee material.

Recommendation 4:

That **Standing Order 177** be repealed and the following Standing Order be substituted –

177. Status of Committee Deliberations

Committee deliberations shall be conducted in private session, and shall not be disclosed or published by any Committee member or person unless otherwise ordered by the Committee.

Recommendation 5:

That **Standing Order 178** be repealed.

Recommendation 6:

That new **Standing Order 178**, as outlined below, be adopted by the Council –

178. Publication

If a Committee or the Council orders that any Committee evidence, Committee material or Committee deliberations be public —

- (a) it is a public record of the Council;
- (b) it is deemed to be printed and published by order and under the authority of the Committee or Council; and
- (c) it may be disclosed or published by any Committee Member or person.