

Government guidelines for official witnesses before Parliamentary Committees and related matters, November 1989 (EXTRACT)

Introduction

The current Government Guidelines for Official Witnesses before Parliamentary Committees were tabled in the Senate on 30 November 1989. The guidelines were revised to take into account experience in interpreting and applying the guidelines on the occasions when official witnesses have appeared before parliamentary committees, and the adoption by the Senate of parliamentary privilege resolutions on 25 February 1988. The guidelines are designed to assist public officials in the preparation of submissions and the giving of oral evidence to parliamentary committees.

This brochure brings together those components of the guidelines that provide an overview of the matters to be kept in mind by public officials when appearing before parliamentary committees.

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.

Preparation of written material

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.

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.

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 paras 2.25 - 2.38 of the Guidelines.

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... 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.

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.

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.

Copies of the guidelines are available from your departments.

Other reference documents

Australian Securities Commission Act 1990

National Crime Authority Act 1984

Freedom of Information Act 1982

Parliamentary Privileges Act 1987

This information has been taken from the Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters, November 1989. For further advice on these matters please contact the Senior Clerk of Committees on (02) 6277 3506, Fax: (02) 6277 3899.