

2019

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**GOVERNMENT RESPONSE TO THE
SELECT COMMITTEE ON PRIVILEGES 2019
REPORT UNAUTHORISED RELEASE OF COMMITTEE DOCUMENTS
RECOMMENDATION 1**

**Presented by
Mr Andrew Barr MLA
Chief Minister**

Introduction

On Thursday, 4 April 2019, the Legislative Assembly resolved to establish a Select Committee on Privileges to examine whether there had been a breach of privilege relating to the Standing Committee on Health, Ageing and Community Services in the release of unauthorised committee documents. The committee concluded its inquiry with the release of the final report on 9 July 2019; and was subsequently tabled in the Legislative Assembly on 30 July 2019.

Recommendation 1 recommended that the Chief Minister, Treasury and Economic Development Directorate:

- 1) review relevant sections of its publication Guidelines for Officials on Participation in Legislative Assembly and Other Inquiries, with a view ensuring that the guidelines make it clear that privilege may attach to any document provided to an Assembly committee; and
- 2) remind all ACT Public Service Directorates and agencies of the existence of the guidelines.

In response to this recommendation the Guidelines for Officials on Participation in Legislative Assembly and Other Inquiries (the Guidelines) have been amended and are at attachment A. Further, the Guidelines have been circulated to all ACT Public Service Directorates.



GUIDELINES FOR OFFICIALS

Participation in Legislative Assembly and Other Inquiries

Chief Minister, Treasury and
Economic Development
Directorate

September 2019

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1. INTRODUCTION

SCOPE OF THESE GUIDELINES

- 1.1. The Guidelines have been prepared to assist officials preparing for, and participating in, hearings of committees of the Legislative Assembly for the Australian Capital Territory (the Assembly).
- 1.2. They also canvass:
 - (a) interactions between officials and Members of the Legislative Assembly (MLAs);
 - (b) participation in inquiries by parliaments of other jurisdictions;
 - (c) participation in inquiries under the *Inquiries Act 1991* (the Inquiries Act) and Royal Commissions;
 - (d) court appearances;
 - (e) public interest disclosures; and
 - (f) public speeches by officials.
- 1.3. Officials requiring further assistance should seek advice from the Cabinet Office, Chief Minister, Treasury and Economic Development Directorate (CMTEDD).
- 1.4. The *Cabinet Handbook* provides guidance on procedures for Cabinet consideration of Government Submissions to Assembly Committees (Committees).

ACCOUNTABILITY

- 1.5. By longstanding convention in Australian jurisdictions and other Westminster parliamentary systems, the public advocacy for, or defence of, government policy is a matter for ministers. Public servants (officials) play an important role in assisting ministers to fulfil accountability obligations to legislatures by providing information about the factual and technical characteristics of policies and their administration. It is improper for officials to offer, or to be asked to offer, opinions on the merits of policy or party political matters.
- 1.6. The *Public Sector Management Act 1994* (the PSM Act) regulates the administration of the public sector of the Territory. Section 5 of the PSM Act provides that the Act establishes and maintains an apolitical public sector that assist the Executive to meet the needs of the community and serves the community on behalf of the Executive.

2. POWERS AND PROCEDURES OF THE LEGISLATIVE ASSEMBLY

POWERS OF THE LEGISLATIVE ASSEMBLY

- 2.1. Section 24 of the *Australian Capital Territory (Self-Government) Act 1988 (Cwlth)* (the Self Government Act) provides:

(1) In this section:

powers includes privileges and immunities, but does not include legislative powers.

(2) Without limiting the generality of section 22, the Assembly may also make laws:

- (a) declaring the powers of the Assembly and of its members and committees, but so that the powers so declared do not exceed the powers for the time being of the House of Representatives or of its members or committees; and
- (b) providing for the manner in which powers so declared may be exercised or upheld.

(3) Until the Assembly makes a law with respect to its powers, the Assembly and its members and Committees have the same powers as the powers for the time being of the House of Representatives and its members and committees.

(4) Nothing in this section empowers the Assembly to imprison or fine a person.

- 2.2. The Assembly has not legislated in accordance with the above provisions, and so its relevant powers are, for the time being, those prescribed by the Self Government Act.
- 2.3. The *Standing Orders of the Assembly* provide for two types of committee: standing (which are ongoing and are given broad terms of reference by the Assembly) and select (which are given narrower and time limited terms of reference).
- 2.4. Procedures for the appearance of witnesses before committees and on the submission of documents are set out in Assembly Standing Orders 215 to 264.
- 2.5. Committee inquiries can be established by resolution of the Assembly (Assembly Standing Order 216). Standing committees are also empowered to self-refer any matter within their terms of reference.
- 2.6. Committees have the power to summon witnesses and to send for persons, papers and records (Assembly Standing Orders 239 and 240).
- 2.7. Committees have the power to authorise publication of any evidence given before them and any document presented to them (Assembly Standing Order 241 and 243).
- 2.8. A committee's evidence, documents, proceedings and reports may not be disclosed or published to a person (other than a Member of the committee or Assembly employee if necessary in the course of their duties) unless they have been reported to the Assembly; or authorised by the Assembly or the committee (Standing Order 241).

PARLIAMENTARY PRIVILEGE

- 2.9. All witnesses examined by the Assembly or any of its committees are entitled to the protection of parliamentary privilege in respect of anything that may be said by them in their evidence (Assembly Standing Order 261). A person cannot be sued or prosecuted in respect of the material or information contained within the evidence, nor can that evidence be used against a person in legal proceedings.
- 2.10. All documents which are submitted to an assembly committee become, immediately upon submission, the property of the committee and are subject to parliamentary privilege. This includes formal submissions, emails and letters.
- 2.11. Material provided to a committee cannot be altered or withdrawn without the approval of the committee (Assembly Standing Order 244). Formal authorisation is also required for any publication or further dissemination of any provided material.
- 2.12. It is prudent that all auxiliary material relating a committee submission, including drafts and emails, are handled with careful consideration of parliamentary privilege. These materials should be marked as highly sensitive and have their circulation strictly limited to essential personnel.
- 2.13. The unauthorised disclosure of a document or evidence given to a committee may be treated as contempt. Where such disclosure is able to be attributed to an official, it may be considered a breach of the ethical requirements of the *PSM Act* in addition to any sanction imposed by the Assembly.
- 2.14. All witnesses appearing before Assembly committees are provided with the following statement in relation to privilege:

“Parliamentary privilege” means the special rights and immunities which belong to the Assembly, its committees and its members. These rights and immunities enable committees to operate effectively, and enable those involved in committee processes to do so without obstruction, or fear of prosecution. Witnesses must tell the truth, and giving false or misleading evidence will be treated as a serious matter.

3. WITNESSES

REQUESTS FOR ATTENDANCE

- 3.1. Requests for an official to attend a committee hearing, or to provide material to it, should be made through the relevant minister. Officials appear at the discretion, and with the permission of the Minister.
- 3.2. It is however common practice that once a minister has agreed to a committee's request for officials to attend hearings, committee secretariats deal directly with officials.
- 3.3. Notwithstanding Standing Order 239, the usual practice is for witnesses to be invited, rather than summoned, to attend hearings to give evidence.
- 3.4. Where an official is directly requested to give evidence, they should inform their minister as soon as possible.

CONSULTATION WITH MINISTERS

- 3.5. In preparing to appear before a Committee, officials should consult their Minister, especially if consideration is being given to withholding certain documents in the public interest, or to asking that evidence be taken in camera (in private).

CHOICE OF WITNESSES

- 3.6. A Minister may delegate to the relevant Director-General the responsibility of deciding which officials are most appropriate to provide the information sought by the committee. It is essential that the officials selected have sufficient seniority and are sufficiently close to the matters under inquiry to be able to respond appropriately to committee members' questions.
- 3.7. It is essential that all witnesses are thoroughly prepared for hearings. Committee secretaries may be able to provide guidance in some cases on issues of particular interest to the committee to assist these preparations.
- 3.8. Witnesses should ensure no conflicts arise in their appearance before a committee, or take appropriate steps to disclose or otherwise deal with such conflicts.

COMMITTEES DEALING WITH INDIVIDUAL CONDUCT

- 3.9. Where a committee is inquiring into the personal actions of a Minister or official there may be circumstances where it is not appropriate for the requirement for the Minister to be consulted to be followed. Officials should consult their Director-General on appropriate conduct in such circumstances.

4. CONDUCT OF WITNESSES

GENERAL APPROACH

- 4.1. The ACT Government is committed to the highest standards of transparency, accountability and responsibility to the Assembly and people of the ACT. Officials should be as open as possible with committees and if unable to answer questions, the question can be taken on notice.
- 4.2. Officials should maintain the highest standard of courtesy in their dealings with committees at all times.
- 4.3. Assembly Standing Order 264A(l) provides that “an officer of a department of the Territory or the Commonwealth or 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”.
- 4.4. Where officials do not have details of matters to hand, they should qualify their answers as necessary to avoid misleading the committee. If appropriate, they should give undertakings to provide complete answers as soon as possible (desirably at a later stage in proceedings) or take the question on notice.
- 4.5. 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:
 - (a) matters of policy (see paragraph 4.7 below);
 - (b) public interest immunity (see paragraph 5.1 below); and
 - (c) confidential material where in camera evidence is desirable (see paragraph 6.1 below).

QUESTIONS ABOUT THE RESPONSIBILITIES OF OTHER AGENCIES

- 4.6. Where a question canvasses issues that fall within the responsibility of another agency, officials should request that it be directed to that agency.

MATTERS OF POLICY

- 4.7. Officials should confine their evidence to factual material. It is inappropriate for officials to canvass the content of their advice to Ministers, or the scope of Cabinet’s deliberations on an issue.
- 4.8. Questions that go beyond description of government policy and its administration should be referred to the Minister at the table.
- 4.9. This restriction does not necessarily apply to statutory officers.

CORRECTION OF EVIDENCE

- 4.10. After reviewing the proof transcript of their evidence, witnesses should propose for the committee's consideration any necessary corrections. Hansard is a verbatim record of proceedings, so corrections must be confined to typographical or transcription errors and not changing the evidence provided.
- 4.11. If it is considered necessary to correct, amplify or clarify evidence provided to the committee, officials should write to the relevant committee secretary as soon as possible.

ATTEMPTS TO INFLUENCE WITNESSES

- 4.12. An attempt to offer or promise any inducement or benefit, or by other improper means, to influence another person in respect of any evidence given or to be given before the Assembly or a committee, or to induce another person to refrain from giving any such evidence by fraud, intimidation, force or threat, may be viewed by the Assembly as contempt. This extends to inflicting any penalty or injury upon a person, or depriving another person of any benefit, on account of the giving or proposed giving of any evidence, or of any evidence given or to be given, before the Assembly or a committee.
- 4.13. Chapter 26 of the Standing Orders sets out the general rules and guidelines for dealing with matters of privilege and contempt (see Standing Orders 276 – 280).

SELF-INCRIMINATION

- 4.14. In general, a witness cannot refuse to answer questions or produce documents on the ground that doing so might incriminate the witness.

ACCESS TO COUNSEL

- 4.15. Counsel or other advisers may not represent witnesses before a committee unless ordered by the Assembly. Under Standing Order 246 however, a witness may consult with counsel or advisers while giving evidence.

WITNESSES FROM STATUTORY AUTHORITIES

- 4.16. Authorities that have statutory public information and education roles, or otherwise have independence from Ministerial direction, 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.
- 4.17. In other respects, the processes in the Guidelines should be followed, including in relation to claims of public interest immunity.

APPEARANCE IN A 'PERSONAL' CAPACITY

- 4.18. It is not intended for there to be any restriction on officials appearing before committees in a personal capacity as a private citizen or member of a community group.

- 4.19. In that situation, however, officials should pay heed to their duties under the PSM Act. An officer who is appearing before a committee in a personal capacity should make it clear to the committee the basis on which they appear.
- 4.20. 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 senior officers need to consider carefully whether it is possible for them realistically to claim to appear in a personal capacity, particularly if they are likely to be asked to comment on matters which fall within their area of official responsibility.

INQUIRIES INTO ADMINISTRATIVE MATTERS

- 4.21. Where a committee's inquiry is directed towards the examination of Directorate administration and practice, it is for the Director-General, with the general consent of the relevant Minister to use discretion as to the extent to which aspects of these guidelines, such as the approval of written evidence and the selection of witnesses, are to be followed.

5. PUBLIC INTEREST IMMUNITY

- 5.1. Under certain circumstances, a request to provide certain oral or documentary evidence may be declined on the grounds that disclosure to the committee would not be in the public interest.
- 5.2. Claims of public interest immunity should only be made by Ministers (the responsible Minister in consultation with the Attorney- General and the Chief Minister). As far as practicable, decisions to claim public interest immunity should take place before hearings. The Director-General CMTEDD should be consulted in the event consideration is being given to making such a claim.
- 5.3. Before making a claim of public interest immunity, a Minister might explore the possibility of providing the information in a form, or under conditions (including on a confidential basis) which would not give rise to a need for the claim.
- 5.4. If an official believes that circumstances have arisen during a hearing that justify a claim of public interest immunity being made, they should request postponement of the relevant part of the evidence until ministers can be consulted.
- 5.5. The decision on whether to accept the claim or not rests with the committee or the Assembly.

SCOPE OF PUBLIC INTEREST IMMUNITY

5.6. In May 2010, the Select Committee on Privileges noted¹:

“It is an accepted principle that certain categories of information may be subject to public interest immunity and may be withheld from committees, for example cabinet papers and details of discussions in cabinet; matters relating to national security and “materials that might negatively affect the commercial interests in the market place if disclosed”.

- 5.7. Public interest immunity can only be claimed if it can be established that the disclosure of information would cause a specific harm to the public interest. Documents or oral evidence which could form the basis of a claim of public interest immunity may include matters falling into the following categories:
- (a) Executive privilege - material disclosing deliberations of Cabinet;
 - (b) national security - material the disclosure of which could cause damage to national security, defence, or international relations;
 - (c) intergovernmental relations – material the disclosure of which could cause damage to the ACT Government’s relations with the Commonwealth and other State/Territory Governments;
 - (d) Unreasonable invasion of privacy – material disclosing personal or private information about individuals the disclosure of which would unreasonably infringe their privacy;
 - (e) Commercial interests – material that might negatively affect commercial interests in the market place if disclosed;
 - (f) Legal proceedings – material that might influence the outcomes of a legal process or information that, should it attract parliamentary privilege, might jeopardise matters before the courts; and
 - (g) Law enforcement – material that is a part of investigations being undertaken by a law enforcement agency the disclosure of which might interfere with the investigation.
- 5.8. The *Companion to the Standing Orders for the Legislative Assembly for the Australian Capital Territory* provides further guidance on Assembly practice in relation to claims of public interest immunity. Further discussion is contained in *House of Representatives Practice* or *Odgers’ Australian Senate Practice*.
- 5.9. Assembly Continuing Resolution 10 sets established procedures references in Assembly proceedings to matters that are before the courts.

COMMERCIAL INTERESTS

5.10. The obligation of the government to account for its actions limits the extent to which the Territory can enter into confidentiality agreements. This extends to the government’s

¹ Select Committee on Privileges Report *Evidence of Mr Mark Sullivan to the Select Committee on Estimates 2009-10*, May 2010 at 3.33

commercial dealings with the private sector, for which the requirements of the *Government Procurement Act 2001* (the Procurement Act) also apply. Accordingly, public interest immunity claims in relation to commercial-in-confidence material should only be made in very limited cases.

- 5.1. The Procurement Act requires the public disclosure of all government contracts with a value of \$25,000 or more except for inter-governmental agreements, employment contracts, and contracts for the settlement of a legal liability to an individual. For those contracts, which must be publicly disclosed, the Procurement Act contains limited provisions for claiming that any part of the text is confidential.

6. IN CAMERA EVIDENCE

- 6.1. There may be occasions when a Minister would wish, on balancing the public interests involved, to raise with the committee the possibility of producing documents or giving oral evidence in camera.
- 6.2. Committees are under no obligation to agree to such requests.
- 6.3. If an official believes that circumstances have arisen during a hearing to justify a request that evidence be heard in camera, they should request postponement of the relevant part of the evidence until ministers can be consulted.
- 6.4. Committees are not obliged to grant such a request but should be aware of the need to handle sensitive, personal and otherwise confidential material appropriately. In circumstances where this might be anticipated, prior consultation with the committee is advisable.
- 6.5. Circumstances which may warrant in camera proceedings include cases where:
 - (a) a claim of public interest immunity could be justified, but the balance of public interest lies in making information available on a restricted basis;
 - (b) a claim of immunity may not be appropriate, but other considerations justify the committee being asked to consider taking evidence privately; or
 - (c) similar or identical evidence has been previously given in camera to other hearings of the committee or other committees of the Assembly and has not been made public.

PROPOSALS TO PUBLISH IN CAMERA EVIDENCE

- 6.6. If a committee seeks agreement to publish evidence given in camera, officials should ask the committee to delay the decision to enable the witness to consult the relevant Minister. Committees would not normally authorise the publication of such evidence without the concurrence of the witness, although such concurrence is not required.
- 6.7. The Assembly has the power to authorise the publication of evidence taken in camera by a committee, whether or not the particular committee that received the evidence agrees (Standing Order 243).

COMMITTEE REQUESTS FOR EVIDENCE OFF THE RECORD

- 6.8. Committee proceedings are generally conducted in public and recorded and transcribed by Hansard. There is no formal category of 'off the record' evidence which has any special protection or status.
- 6.9. An official asked to provide off the record, or informal advice, or evidence to committee should treat the request in accordance with procedures outlined for requests for briefing by non-Executive members outlined at paragraph 8.1 below.

7. PREPARATION OF WRITTEN MATERIAL

WRITTEN SUBMISSIONS

- 7.1. The Government routinely makes written submissions to committee inquiries. These submissions are considered and agreed by the Cabinet before they are provided to committees. A Government submission is not normally provided to select committees on estimates.
- 7.2. Agencies do not generally make written submissions to Committee inquiries in their own right, the submission is provided as a government submission.
- 7.3. Procedures for the preparation of government submissions to committee inquiries are set out in the *Cabinet Handbook* and the *Assembly Process Handbook*.
- 7.4. There may be occasions when a Minister wishes to provide material to a Committee that is purely factual in nature. Such material does not require Cabinet approval. It is usually provided by way of a letter from the Minister to the Committee Chair.

AGENCY SUBMISSIONS TO COMMITTEE INQUIRIES

- 7.5. In the event a government agency proposes to make a submission to a Committee in its own right, the approval of the relevant Minister should be sought. Such Submissions:
 - (a) should not advocate, defend or canvass the merits of government policies;
 - (b) may describe those policies and the administrative arrangements involved in implementing them;
 - (c) should not identify considerations leading to government decisions or possible decisions, unless those considerations have already been made public by the government or the minister authorises the agency 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.

8. INTERACTION WITH MEMBERS OF THE LEGISLATIVE ASSEMBLY

INTRODUCTION

- 8.1. This section sets out the general requirements for officials in relation to the provision of information and advice to MLAs. It is not intended to apply to Statutory Office Holders, whose powers and functions are prescribed in relevant legislation.
- 8.2. It is not appropriate for official to provide briefings directly to a non-Executive member (or a staff member of a non-Executive member), without the request and approval of the respective Minister's Office.
- 8.3. Should an official receive a direct request for a briefing or an invitation to a meeting or event from a non-Executive member (or a staff member of a non-Executive member), the request should be referred to the relevant Minister.
- 8.4. Except at the behest of the Minister:
 - 8.4.1. if the provision of a briefing is by means of a verbal briefing, the respective Minister's Office Chief of Staff or Portfolio Policy Advisor must be in attendance, usually with a high level member of the ACTPS; and
 - 8.4.2. a briefing will only proceed when the non-Executive member is present.
- 8.5. Any briefing provided by an official will not include political commentary.
- 8.6. An exception to this general proposition exists in circumstances where officials are exercising independent statutory decision making powers (for example, under the *Freedom of Information Act 2016*). It is nevertheless appropriate for officials to provide advice to their Minister of interactions with MLAs.
- 8.7. In all cases, officials interacting with non-Executive MLAs should be appropriately courteous and conscious of the rights and privileges of MLAs and the provisions of Standing Orders 277 and 278 in relation to contempt and interference with MLAs' discharge of their duties.
- 8.8. The ACTPS should be aware of MLAs' obligations under the Code of Conduct for MLAs, specifically that where they are in receipt of information which is either confidential or unavailable to the general public, MLAs are privileged to receive this information. It is provided to assist them in their decision making for the benefit of the Territory. The status of this information should not be compromised. The Code of Conduct for MLAs requires that MLAs are not to misuse any confidential information received, particularly for personal gain or in the personal gain of others. MLAs should make only proper use of those public resources to which they have access.
- 8.9. Under the MLA Code of Conduct, Members are required to act with integrity, honesty and diligence. In their dealings with staff of the Assembly and members of the ACTPS, MLAs are required to extend professional courtesy and respect and recognise the unique

position of impartiality and the obligations of ACTPS officials.

- 8.10. During the pre-election Caretaker period, different procedures apply. These are set out in the *Caretaker Conventions*.

PARLIAMENTARY GROUP BRIEFINGS

- 8.11. It is appropriate for officials, subject to Ministerial authorisation to provide factual and technical briefing to government and non-government parties to assist them in understanding the background to government legislation or other policies.
- 8.12. As in the case of committee hearings it is inappropriate for officials to offer, or be asked to offer, opinions on matters of a policy or party-political nature. With this in mind, it is customary for an adviser from the Minister's office or indeed the Minister to attend such briefings to respond to questions of that nature.
- 8.13. Requests for officials to provide briefings should be made through the relevant Minister. Ministers receiving such requests should inform the Chief Minister of their proposed approach. Officials receiving such a request directly should refer that request to their Minister's office for advice on handling.

BRIEFINGS OF INDIVIDUAL MEMBERS OF THE ASSEMBLY

- 8.14. MLAs should request information on government policies or operations through the office of the responsible Minister. Where officials are approached directly they should respond to requests from MLAs promptly and courteously however, should only provide publicly available information without the approval of a Minister.

9. INQUIRIES OF OTHER PARLIAMENTS

- 9.1. Where the ACT Government is invited to make a submission to an inquiry being conducted by the parliament of another Australian jurisdiction the relevant Minister will decide whether to respond, in consultation with the Chief Minister. Such submissions are considered by Cabinet in accordance with the requirements of the *Cabinet Handbook*.
- 9.2. Requests for the attendance of ACT officials before such an inquiry should be directed through the Chief Minister to the relevant Minister who will agree if such attendance is appropriate.
- 9.3. Officials should familiarise themselves with the procedures of the parliament conducting a particular inquiry before giving evidence. While procedures, protections and privileges are generally consistent each jurisdiction and each parliamentary chamber has its own processes.

10. INQUIRIES UNDER THE *INQUIRIES ACT 1991*

- 10.1. The Inquiries Act enables the government to appoint one or more persons as a board of inquiry to inquire into the matters specified in an instrument of appointment.
- 10.2. The Chairperson or a member authorised by the chairperson, may summon a person to appear before the board to give evidence and produce documents and other things referred to in the summons. The Inquiries Act includes offences for failure to attend or answer questions.
- 10.3. After completing its inquiry, the board must prepare a report and submit it to the Chief Minister, who may table it (or part of it) in the Assembly (section 14). The Chief Minister also may make the report (or part of it) public, irrespective of whether it has been tabled in the Assembly.
- 10.4. The government generally responds to such reports although there are no specific timing requirements. Normal Cabinet processes apply to the consideration of the proposed response.

WITNESSES

- 10.5. The chair of an inquiry established under the Inquiries Act may approach a minister or agency for a submission or for information. If the minister decides that a submission and/or attendance of officials is appropriate, then the procedures applying to hearings by committees should be followed.
- 10.6. A statement or disclosure made, or a document or other thing produced, by a witness while giving evidence before a board, or any information, document, or thing obtained as a direct or indirect consequence of making a statement or disclosure, cannot be used as evidence against that witness in any civil or criminal proceedings (except in proceedings for an offence against the Inquiries Act itself) (section 19).

CONDUCT OF HEARINGS

- 10.7. Boards may determine the manner in which they conduct an inquiry. They are not bound by the rules of evidence but may inform themselves of any matter in such manner as they think appropriate. They may do whatever they consider necessary or expedient for the fair and expeditious conduct of the inquiry (section 18). While their hearings should be in public, they can direct that a hearing (or part of a hearing) take place in private or that restrictions be placed on the publication or disclosure of evidence.

OFFENCES

- 10.8. Offences under the Inquiries Act include failure of witnesses to attend or produce documents or refusal to give evidence without a reasonable excuse. Unlike the circumstances applying to the Assembly, offences are punishable by a fine or a period of imprisonment. The Justice and Community Safety Directorate should be consulted if official witnesses may be placed in this situation, especially where a claim of public interest immunity may be under consideration.

- 10.9. It is an offence for a person to knowingly conceal, damage, destroy or alter a document or other thing that may be required in evidence before a board.
- 10.10. Information concerning the deliberations of Cabinet should be treated in accordance with the *Cabinet Handbook*.

11. ROYAL COMMISSIONS AND LEGAL PROCEEDINGS

- 11.1. Royal Commissions have similar powers to Boards of Inquiry, with the main difference being that a Commissioner of a Royal Commission must be, or have been, a judge or legal practitioner.
- 11.2. The *Royal Commissions Act 1991* enables the Royal Commissions to summon witnesses to appear and to provide relevant documents. At a hearing, witnesses may be represented by a legal practitioner. Hearings are usually held in public, and evidence tendered is usually made public. However, a Commissioner may direct that a hearing (or part of a hearing) take place in private or that restrictions be placed on the publication or disclosure of evidence.
- 11.3. An official appearing before an ACT or 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.
- 11.4. Officials appearing before Royal Commissions established by the Commonwealth should take note of the provisions of the Commonwealth *Royal Commissions Act 1902 (Cwlth)*.
- 11.5. Where guidance is required regarding counsel for officials, advice should be sought from the Justice and Community Safety Directorate.

COURTS AND TRIBUNALS

- 11.6. Courts and tribunals have different rules regarding the admission of evidence and different protocols need to be observed to those outlined above. Where officials require guidance or counsel in respect to 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 Justice and Community Safety Directorate.

12. PUBLIC INTEREST DISCLOSURE

- 12.1. The *Public Interest Disclosure Act 1994* (the PID Act) establishes procedures for reporting wrongdoing (including for example, fraud or corruption) in the ACT public sector. Such disclosures are commonly called "whistle blowing".

- 12.2. Any person can make a disclosure, although they need to believe, on reasonable grounds, that they have information that indicates that some wrongdoing has occurred. The identity of the people involved does not have to be revealed, but sufficient information to permit investigation must be provided.
- 12.3. The PID Act protects a person making a public interest disclosure from legal action or other reprisals.
- 12.4. The PID Act creates a penalty for knowingly or recklessly supplying false or misleading information.
- 12.5. Further guidance on disclosures by officials under the PID Act can be sought from the Public Sector Standards Commissioner.

UNAUTHORISED DISCLOSURE OF INFORMATION

- 12.6. There is an important distinction between genuine whistle-blowing on the one hand, and leaking of official information on the other. While genuine whistle-blowers seek to maintain the integrity of the public service by reporting and correcting inappropriate or illegal behaviour to the proper authority, leaking involves the unlawful and unauthorised release of information. Such action may constitute a breach of the PSM Act, and may amount to a criminal offence under the *Crimes Act 1901*.
- 12.7. Leaking undermines the critical relationship of trust and confidence between the government of the day and the public service.

13. PUBLIC SPEECHES BY OFFICIALS

- 13.1. Officials are often invited to attend and address public forums or 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.
- 13.2. Ministers may decide to authorise agency chief executives to clear material for public speeches by officials.
- 13.3. In all cases, officials should avoid taking partisan positions on policy issues or matters of public controversy.

14.KEY CONTACTS CHIEF MINISTER, TREASURY AND ECONOMIC DEVELOPMENT

Executive Branch Manager, Cabinet, Assembly and Government Business	6205 5347
Director, Cabinet, Assembly and Government Business	6207 5989
Assistant Director, Assembly and Government Business	6205 0543