

CODE OF PRACTICE FOR PUBLIC SERVICE EMPLOYEES ASSISTING OR APPEARING BEFORE PARLIAMENTARY COMMITTEES

CONTENTS

Introduction
Application of the Code
General principles – factual or technical information, not policy
General duties of public service employees
Powers and responsibilities of committees and communication with Chief Executives
Private evidence
Public service employees as witnesses
Public service employees assisting committees
Private Members' Bills
Objections to producing material or answering questions
Threatening or disadvantaging a witness or assistant
Contempt of Parliament
Access to legal advice
Correction of evidence
Attendance in a personal capacity

Introduction

1. This *Code of Practice for Public Service employees assisting or appearing before Parliamentary Committees* (“Code”) provides guidance for public service employees dealing with parliamentary committees (“committees”) as either an assistant or as a witness.
2. This Code seeks to recognise the importance of the Legislative Assembly having a high standard of scrutiny over the executive government and legislation while recognising the duties owed by public service employees to their departments and Ministers, and to provide guidance on the public service employee’s role in this process.
3. This Code has been approved by both the Government and the Legislative Assembly.

Application of the Code

4. This Code applies to employees (“public service employees”) of entities declared to be government departments in accordance with section 14 of the *Public Service Act 2008*. It may also be used by officers and employees of statutory authorities, government owned corporations and other government entities.

General principles – factual or technical information, not policy

5. Public service employees may have dealings with committees as either an assistant or a witness. In both roles they can provide committees with detailed information about the processes and operations of departments and other entities to allow committees to effectively discharge their functions to scrutinise the executive, consider proposed legislation and conduct reviews and inquiries on behalf of the Legislative Assembly.
6. As assistants or witnesses, public service employees may be called upon to provide factual and technical background to Government legislation and administration. However, the responsibility for advocacy and defence of Government policy rests with the responsible Minister and not with public service employees. Therefore, when providing information to committees, public service employees may describe Government policies and the administrative arrangements and procedures involved in implementing those policies but should not:
 - advocate, defend or canvass the merits of government policies or alternate policy options (including the policies of other past and present local, state, federal and foreign governments); or
 - identify considerations leading to Government decisions or possible decisions (such as Cabinet deliberations), unless those considerations have already been made public or the Minister authorises the department to identify them.
7. Most assistance by public service employees will be provided in person to committees. However, a committee may request that information be provided in writing. If this occurs, the public service employee should discuss this with their Chief Executive and obtain approval for the content and format of the written information to be provided.

General duties of public service employees

8. Public service employees are expected to provide committees with full and honest answers and evidence. If public service employees are unable or unwilling to answer questions or provide information, they should advise the committee accordingly and provide reasons. Committees have a corresponding duty to consider the reasons and provide reasonable opportunity for public service

employees to obtain advice and assistance. (See Schedule 3 of the *Standing Rules and Orders of the Legislative Assembly – Instructions to Committees Regarding Witnesses.*)

9. Public service employees appearing before committees must act in accordance with the *Code of Conduct for the Queensland Public Service*. In particular they must:
 - act with integrity and impartiality, maintain the highest ethical standards and provide advice that is objective, independent, apolitical and impartial, including answering questions respectfully, truthfully and to the best of their ability;
 - promote the public good and be responsive to the requirements of the community and the government by ensuring the committee has access to the information they require, within their role as a representative of their department;
 - act with commitment to the system of government by upholding the law, and operating within the framework of Ministerial responsibility to the government, the Parliament and the community by understanding and acting within their role as a representative of the Minister;
 - act accountably and transparently by exercising proper diligence, care and attention and assisting committees with complete and accurate information, unless there are good reasons for withholding it.
10. In dealing with non-public information, public service employees have a duty to ensure their Chief Executive is aware of, and approves the provision of, non-public information to committees.
11. Public service employees should fully understand the provisions of this Code prior to assisting or appearing before a committee.
12. Chief executives are expected to appear in person for estimates, supported by other staff as necessary.
13. A department may not make a submission to a committee on a Bill without the specific approval of the Chief Executive.

Powers and responsibilities of committees and communication with Chief Executives

14. Committees have the power to summons witnesses to give evidence and order them to produce documents. Under the *Parliament of Queensland Act 2001* and *Standing Rules and Orders of the Legislative Assembly*, the powers of the Legislative Assembly and its committees to gather evidence are very extensive, with few legal exemptions. Therefore, careful consideration should be given to whether there are legitimate and recognised grounds, in the public interest, that could be argued to a committee to not provide the document or information (see paragraphs 39 to 44 regarding objections to producing material or answering questions).
15. The Legislative Assembly has adopted instructions for committees to follow in their dealings with witnesses. (See generally Schedule 3 of the *Standing Rules and Orders of the Legislative Assembly – Instructions to Committees Regarding Witnesses.*)
16. These instructions, among other matters, provide that committees are to:
 - Usually invite the production of documents and the appearance of witnesses, rather than order production or attendance;
 - Give reasonable notice for appearing and will provide an explanation of the matters to be considered and access to relevant documents;

- Not question public service employees about Government policy;
 - Enable a witness an opportunity to object to questions asked or material sought, or to request that the material be kept private (see below for objections to material or evidence sought by a committee); and
 - Be generally fair and reasonable in their dealings with witnesses.
17. If a committee decides to conduct an inquiry into a Bill or another matter relating to a department, the committee should write to the responsible Chief Executive advising of the nature and scope of the inquiry and other details the committee deems appropriate. This advice should include an indication of whether or not the committee anticipates requiring the attendance of public service employees as either assistants or witnesses.
18. In response, the Chief Executive should, as soon as practicable, advise the committee in writing:
- whether or not they consider that the subject matter of the inquiry falls within the department's responsibility; and
 - the details of a suitable contact officer from the department, of appropriate seniority and subject knowledge, to coordinate requests from the committee for information or assistance.
19. All requests from the committee to the department for information and attendance are to be in writing and directed to the Chief Executive with a copy sent to the contact officer. Committee requests for information and assistance should be as specific as possible. The timeframe in which the information or attendance is required should also be specified.
20. It is the Chief Executive's responsibility to ensure that public service employees appearing before a committee have sufficient experience and knowledge of the matter being considered and are thoroughly prepared for hearings. In practice, the Chief Executive may identify who should appear before a committee, taking into account the nature and subject of the committee's considerations and judging when it is necessary to consult the Minister about proceedings.
21. All information and material supplied by a department in response to a committee's request should be accompanied by a covering letter. The covering letter should identify the request by the committee and the relevant information or material being supplied.
22. If the department is unable or unwilling to supply the information or material requested, the Chief Executive should write and inform the committee of this and give reasons.
23. Should the inability to provide the information result from the timeframes specified, a committee may then nominate a further period in which to supply the information and this granting of an extension should be confirmed in writing by the committee.

Public service employees as witnesses

24. Public service employees may be called as witnesses for examination of estimates, proposed legislation and to review departmental performance. They may also be called for inquiries, including public hearings where the media may also be present, unless the committee agrees to hear evidence in private.
25. Public service employees should consult and inform their Chief Executive before and following appearing before a committee and advise of any significant matters which are likely to arise or do arise. The Chief Executive must in turn judge when it is necessary to consult the Minister about proceedings.
-

26. If a public service employee is unable to immediately answer a question asked by a committee, the employee should advise the committee of this and indicate that they will endeavour to ascertain the answer to the question.

Private evidence

27. Committees can receive evidence in private sessions. This evidence will remain confidential unless the committee otherwise resolves. Before publishing information received in private, committees will provide the opportunity to submit that the material should not be published. Material that is not relevant to the committee's inquiry and reflects adversely on a person may be expunged from the transcript of evidence. (See generally Schedule 3 of the *Standing Rules and Orders of the Legislative Assembly* – Instructions to Committees Regarding Witnesses.)
28. While private meetings of committees are generally confidential and should not be revealed without permission of the committee, the *Standing Rules and Orders of the Legislative Assembly* exempt disclosure from a public service employee to their Chief Executive and Minister.

Public service employees assisting committees

29. Public service employees may be asked to assist committees in relation to Bills, or in relation to an inquiry.
30. In relation to Bills, a public service employee may be asked to assist the committee by providing information about the Bill and how it will be implemented, clarifying how evidence received by the committee relates to the proposed legislation, producing departmental reports on submissions, and identifying potential solutions to emerging issues, including possible amendments and sometimes assisting with negotiations between the Minister and the committee on the detailed content of the Bill.
31. Public service employees are to seek their Chief Executive's approval to provide assistance to a committee, and the form any assistance will take (including any limits there may be to that assistance). Any limitations placed on the involvement of public service employees should be made clear to the committee.
32. Where assistance is provided in relation to a Bill, public service employees need to ensure they understand the Government's position on the Bill and the extent to which the Government will consider amendments, so that they can work constructively with the committee.
33. Any conflicts of duty should be managed from the position that while the committee is entitled to expect the public service employee to assist them as far as their role permits, public service employees represent and are accountable to their Chief Executive and the Minister. Where committee members question government policy, the public service employee should clarify their role with the committee and seek leave to consult or defer to their CEO or Minister.
34. It is the committee's responsibility to clarify with the public service employee the nature of the meeting or proceedings – i.e. whether it is confidential or not. Where the proceedings are confidential, care must be exercised to ensure information remains confidential, unless otherwise authorised by the committee. Inappropriate disclosure of information or documents may be regarded as a contempt of the Parliament. However, the *Standing Rules and Orders of the Legislative Assembly* exempt disclosure from a public service employee to their Chief Executive and Minister.
35. In assisting a committee on a Bill, public service employees may be expected to undertake consultation with Ministers and other departments to ensure the advice represents Government policy rather than a narrow departmental view. Committee permission is not needed to do this, so long as confidential committee proceedings are not disclosed without the committee's permission. However, people consulted must understand the confidential nature of any committee proceedings under discussion.
-

36. If public service employees assisting a committee need to consult or obtain factual information outside the public service, they must obtain the committee's approval before disclosing any committee proceedings. Again, those involved must be cautioned about the confidential nature of committee proceedings.

Private Members' Bills

37. Committees may request assistance with Private Members' Bills. Even when the Government is opposed to the policy in a Bill, it may make public service employees available to assist committees because of the public interest involved in producing good quality legislation. Assisting public service employees should clarify the Government's policy toward the legislation, the level of resources to be made available and the nature of the assistance to be provided.
38. The Government or a Department may choose to make a submission to a parliamentary committee on a Private Member's Bill, particularly when such Bills affect the interests of the State.

Objections to producing material or answering questions

39. If a public service employee objects to producing material or answering a question from a parliamentary committee they will be invited to state the ground of the objection. (See s. 34 of the *Parliament of Queensland Act 2001* and Schedule 3 of the *Standing Rules and Orders of the Legislative Assembly – Instructions to Committees Regarding Witnesses*.)
40. Recognised grounds for objection to producing material or answering a question include:
- that the question is asking a public service officer to comment on Government policy (see Schedule 3 of the *Standing Rules and Orders of the Legislative Assembly – Instructions to Committees Regarding Witnesses*);
 - that the information sought or question asked is not relevant to the Committee's inquiry;
 - that the information sought should be asked of another Department;
 - that the material sought is commercially sensitive information relating to a Government Owned Corporation and should only be given in private session (see s.100-101 of the *Parliament of Queensland Act 2001*);
 - the material or question involve matters of a private nature that do not affect the subject of the inquiry (see s.34(a) *Parliament of Queensland Act 2001*);
 - the information or question might tend to incriminate a person and the person would be able to claim privilege against self-incrimination in a Supreme Court action (see s.34(b) *Parliament of Queensland Act 2001*);
 - the material sought or question asked relates to briefing, opinion or advice given to Ministers, unless the Minister has agreed to its release, as this may infringe the privileges of the Minister as a Member of the Legislative Assembly (see ss.8 and 9 *Parliament of Queensland Act 2001*); or
 - the information sought is subject to statutory confidentiality or some other legally recognised privilege, such as legal professional privilege, and it is not in the public interest to disclose the matter, particularly in public session.

41. The committee may choose not to seek the material or press the question, or will consider in private whether to insist upon the production of the material or an answer, having regard to the public interest of the information sought and whether the public interest requires that the person be provided with appropriate protection.
42. If public service employees are asked for information they believe should not be released, they should seek the committee's leave to obtain their Chief Executive's view on the issue, rather than refuse to produce the material or answer the committee.
43. In the event that the committee insists upon an answer, the committee may nonetheless decide that it is in the public interest for the answer to be heard in private.
44. If there is a significant or unreasonable cost associated with providing information, committees should be advised of the anticipated costs. The committee may revise its request, but if it does not the request must be complied with. A committee cannot, however, require public service employees to undertake new research or analysis as the power to call for papers and records relates to existing material.

Threatening or disadvantaging a witness or assistant

45. Parliamentary proceedings, including committee proceedings, are subject to absolute privilege, so that those participating in them can do so without fear of external consequences. There must be no pressure placed on public service employees appearing before a committee, in order to deter them from giving honest and impartial advice or evidence, nor should action be taken against them as a consequence of their giving evidence. Such conduct could be punished by the Parliament as a contempt.
46. The absolute nature of parliamentary privilege should not be seen to give public service employees the right to ignore the processes and expectations for their conduct set out in this Code or in the *Code of Conduct for the Queensland Public Service*. Inappropriate conduct before a committee may, along with either criminal proceedings or disciplinary actions within their department, result in actions for contempt by the Parliament.

Contempt of Parliament

47. The Parliament may treat any conduct which amounts to, or is intended to or likely to amount to, improper interference with the free exercise by the Parliament or a committee of its authority or functions as contempt.
 48. Examples of conduct involving committees which may comprise contempt include:
 - breaching or interfering with any of the powers, rights and immunities of the Parliament, (including its committees);
 - deliberately misleading a committee;
 - removing or falsifying documents or records belonging to the Parliament (including its committees);
 - conduct not consistent with the *Code of Conduct for the Queensland Public Service* in the presence of a committee;
 - divulging the proceedings or the report of a committee contrary to Standing Orders or orders of a committee;
 - failing to attend before a committee after being summoned to do so;
-

- intimidating, preventing or hindering a witness from giving evidence to a committee; and
- refusing to answer a question or provide information required by a committee except as permitted.

(See generally s.37 *Parliament of Queensland Act 2001* and Standing Order 266.)

Access to legal advice

49. Witnesses may request attending with a legal advisor. This is not usual where a witness is appearing in their capacity as a public service employee, although it is appropriate for a government legal officer to appear with other public service employees in order to provide their expertise to the committee, as opposed to as legal representation for the department.
50. The committee will consider requests for legal representation, taking into account the need to ensure proper protection of the witness. If leave is not granted, the witness will be advised of the reasons for the decision. If leave is granted, the legal advisor can advise the witness of their rights, but may not address the committee.

(See Schedule 3 of the *Standing Rules and Orders of the Legislative Assembly – Instructions to Committees Regarding Witnesses*.)

Correction of evidence

51. Public service employees must inform the committee as soon as they become aware of any inaccuracies in information they have supplied to a committee, and supply the correct information, consulting with the Minister when necessary.

(See Schedule 3 of the *Standing Rules and Orders of the Legislative Assembly – Instructions to Committees Regarding Witnesses*.)

Attendance in a personal capacity

52. Public service employees have the same political rights as other members of society, including the right to make submissions to, and appear as witnesses before parliamentary committees. Public service employees should be careful that their attendance in a personal capacity is consistent with their professional obligations. In particular, public service employees who appear in a private capacity should, in accordance with the *Code of Conduct for the Queensland Public Service*:
- make it clear to the committee that they appear in a private capacity;
 - avoid commenting on policy issues related to their own department or agency or which they have been professionally associated with;
 - maintain confidentiality of information they have access to due to their professional roles; and
 - advise their Chief Executive that they will be attending.