



THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
JOINT COMMITTEE OF PUBLIC ACCOUNTS

DEPARTMENT OF THE SENATE
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<i>Mary Egan</i>

## REPORT 292

# PUBLIC ACCOUNTS COMMITTEE AND SITTINGS OF THE SENATE

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JOINT COMMITTEE OF PUBLIC ACCOUNTS  
SIXTEENTH COMMITTEE

R E TICKNER, MP (Chairman)

SENATOR J O W WATSON (Vice-Chairman)

SENATOR B K BISHOP

SENATOR THE HON A T GIETZELT

SENATOR P J GILES

SENATOR J P MCKIERNAN

MR K J ALDRED, MP

MR E J FITZGIBBON, MP

MR S P MARTIN, MP

MR G B NEHL, MP

MR G D PROSSER, MP

MR P M RUDDOCK, MP

MR R W SAWFORD, MP

THE HON G G D SCHOLES, MP

MR L J SCOTT, MP

#### DUTIES OF THE COMMITTEE

Section 8.(1) of the Public Accounts Committee Act 1951 reads as follows:

Subject to sub-section (2), the duties of the Committee are:

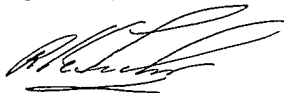
- (a) to examine the accounts of the receipts and expenditure of the Commonwealth including the financial statements transmitted to the Auditor-General under sub-section (4) of section 50 of the Audit Act 1901;
- (aa) to examine the financial affairs of authorities of the Commonwealth to which this Act applies and of inter-governmental bodies to which this Act applies;
- (ab) to examine all reports of the Auditor-General (including reports of the results of efficiency audits) copies of which have been laid before the Houses of the Parliament;
- (b) to report to both House of the Parliament, with such comment as it thinks fit, any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Parliament should be directed;
- (c) to report to both Houses of the Parliament any alteration which the Committee thinks desirable in the form of the public accounts or in the method of keeping them, or in the mode of receipt, control, issue or payment of public moneys; and
- (d) to inquire into any question in connexion with the public accounts which is referred to it by either House of the Parliament, and to report to that House upon that question, and include such other duties as are assigned to the Committee by Joint Standing Orders approved by both Houses of the Parliament.

## PREFACE

The disagreement between the Committee and the Senate regarding the Committee meeting during sittings of the Senate continues. While the Committee endeavours to arrange its public meetings to the maximum extent possible so that they do not clash with sittings of Parliament, practical reasons such as cost, Committee members' time and the Committee's heavy inquiry program make this impossible. The House of Representatives does not place any restrictions on its committees meeting while the House is sitting.

The legal opinions obtained by the Committee have not dissuaded the Committee from the view that the provisions of the Public Accounts Committee Act 1951, a law of the Commonwealth of Australia enacted by both Houses of Parliament and the Queen, must prevail over any conflicting standing order or resolution of one House of the Parliament.

The Committee suggests that the rational solution is to adopt the suggestion of its own Standing Orders Committee and remove the prohibition on Senators attending any meetings of committees during sittings of the Senate. The Committee for its part will endeavour to ensure its own program does not put its Senate members in a position where they will not readily be available to participate in Senate proceedings as required.



R E Tickner, MP  
Chairman



M J Talberg  
Secretary  
Joint Committee of Public Accounts  
Parliament House  
Canberra  
23 November 1988

## TABLE OF CONTENTS

Preface	(v)
Report	1
Attachments	
A. Opinion of the Secretary, Attorney-General's Department 8 November 1988.	5
B. Letter of President of Senate to Chairman Public Accounts Committee, 13 October 1988	8
C. Reply by Chairman PAC to President of Senate, 18 October 1988	12
D. Statement by President of Senate to the Senate on 1 November 1988	13
E. Senate Standing Orders Committee Report 13 May 1987	14

## REPORT

This is the second recent occasion that the Public Accounts Committee has felt it necessary to report to the Parliament on issues relating to the powers of the Committee. The Committee's view was firmly put in its Report 264 - Public Accounts Committee and the Senate<sup>1</sup> tabled in both Houses on 19 March 1987.

The Senate Standing Orders Committee Report of 13 May 1987 disagreed with the Committee's Report 264, mostly on technical matters, and rejected opinions by the then Attorney-General, Senator the Hon Gareth Evans, and his Department without providing any authority, apart from referring to Standing Order 300, to support the contention that conflicting resolutions or standing orders of one House prevail over an Act of Parliament, a law enacted by the Queen, The Senate and the House of Representatives.

The Senate is of the view that no Committee with Senators as members should hold public meetings during Senate sittings and adopted a new Sessional Order (300A) on 22 September 1987 to restate its position:

### Sittings of Committees during sittings of Senate

300A All Committees of the Senate and Joint Committees of both Houses of the Parliament may sit during the sittings of the Senate for the purpose of deliberating in private session, but shall not make resolutions or take votes unless all members of the relevant committee are present, and shall not otherwise sit during the sittings of the Senate unless by special Order of the Senate.

While this Sessional Order goes some way to liberalising the view of the Senate, it also prescribes a 100% quorum for committees. This is inconsistent with the Public Accounts Committee Act as a quorum is specified by the Act.

The rearrangement of the sitting times in the Senate in 1983, together with a changed pattern of meeting weeks, reduced the time available in those weeks which might be clear of Senate sittings. Several requests to meet in that year were refused. Prior to 1983, there appeared little difficulty in meeting outside the sittings of both Houses of Parliament.

-----  
1. Joint Committee of Public Accounts, Report 264, Public Accounts Committee and the Senate, AGPS Canberra 1987, Parliamentary Paper 75 of 1987.

The Committee has continued its long standing practice of endeavouring to arrange its public meetings to the maximum extent possible so that they do not clash with sittings of the Parliament. The Committee has found, with long experience, that for very practical reasons of cost, pressure on Members' and Senators' time and the Committee's heavy inquiry program that it could not agree to the Senate's request. The Committee is mindful of the requirement of its members that they must attend to their proper chamber duties as well as a host of demands placed upon them.

On 13 October 1988, the President of the Senate wrote to the Chairman of the Public Accounts Committee, Mr R.E. Tickner, MP, drawing the Committee's attention to the apparent disregard by the Committee of the new standing order.

In his reply of 18 October the Chairman pointed out that the Committee's position remained as contained in its Report 264 - Public Accounts Committee and the Senate. An offer to discuss the issue with him was also made in the Chairman's letter.

The President subsequently made a statement to the Senate informing the Senate that if the Public Accounts Committee persisted in its attitude[of ignoring the request of the Senate not to hold public meetings during Senate sittings], it would be open to the Senate to direct that Senators not attend meetings of the Committee during sittings of the Senate.<sup>2</sup>

The Committee recently sought and received advice from the Secretary of the Attorney-General's Department reaffirming the previous advice given in Report 264 that the Senate cannot make Standing Orders that purport to apply to the Public Accounts Committee so as to prevent the Committee meeting during a sitting of the Senate and that the PAC is not constrained by Sessional Order 300A.

That opinion of the Secretary of the Attorney-General's Department of 8 November 1988 also stated that on a correct interpretation of the law the Senate could not, by resolution, prevent senators attending meetings of the PAC.

It should also be noted that in its 1987 Report the Senate Standing Orders Committee did, however, recognise that an anomalous situation existed and posed a number of questions to the Senate on whether the Senate should continue the blanket prohibition of committees, with Senators as members, meeting during sittings of the Senate. It proposed a relaxation on the prohibition on meetings of committees, with Senators and members during sittings of the Senate and even suggested that the deletion of certain words would remove the prohibition completely.

-----  
2. Senate Hansard of 1 November 1988, pp 1703-1704



## Conclusion

The Committee restates that it is firmly of the view that the Public Accounts Committee Act, which is an expression of the power given by both Houses, authorises the Committee to meet at such times [and at such places within Australia] as the Committee determines.

The Committee suggests that the rational solution is to adopt the suggestion of its own Standing Orders Committee and remove the prohibition on Senators attending any meetings of committees during sittings of the Senate. The Committee for its part will endeavour to ensure its own program does not put its Senate members in a position where they will not readily be available to participate in Senate proceedings as required.

A handwritten signature in black ink, appearing to read 'R E Tickner', with a horizontal line underneath.

R E Tickner  
Chairman



ATTORNEY-GENERAL'S DEPARTMENT

SECRETARY'S OFFICE

TEL: 71 9000

ROBERT GARRAN OFFICES  
NATIONAL CIRCUIT  
BARTON A.C.T. 2600

8 November 1988

A/82/2550  
A1/2/6



Mr M J Talberg  
Secretary  
Joint Parliamentary Committee of Public Accounts  
Parliament House  
CANBERRA ACT 2600

Dear Mr Talberg

**Public Accounts Committee Act 1951, s.6A: Sittings of the Committee**

I refer to your letter of 2 November 1988 concerning the effect of Senate Sessional Order 300A on the sittings of the Joint Parliamentary Committee of Public Accounts ('the PAC').

2. Senate Sessional Order 300A is as follows:

'300A. All Committees of the Senate and Joint Committees of both Houses of Parliament may sit during the sittings of the Senate for the purpose of deliberating in private session, but shall not make resolutions or take votes unless all members of the relevant Committee are present and shall not otherwise sit during the sittings of the Senate unless by special Order of the Senate.'

3. As you know, this Department has advised you in 1983 and 1987 that the Senate cannot make Standing Orders that purport to apply to the PAC so as to prevent that Committee meeting during a sitting of the Senate.

4. The 1983 advice was confirmed by the then Attorney-General (Senator Gareth Evans). The advice referred to s.6A(1) of the Public Accounts Committee Act ('the Act'), which is as follows:

'6A(1). The Committee may meet at such times and at such places within Australia as the Committee, by resolution, determines or, subject to any resolution of the Committee, as the Chairman determines, but shall not meet at any place outside Australia.'

5. The plain and ordinary import of this provision is that it is for the Committee to decide the times of its meetings. In my view there is no basis for departing from the ordinary meaning. On this, I refer to paragraph 10 of this Department's advice of 30 January 1987 and also to Ex parte Billing (1986) 68 ALR 416, at 420. If it had been intended that s.6A(1) should be subject to Senate Standing or Sessional Orders, it could easily have been drafted in those express terms.

6. Sessional Order 300A was inserted in the Standing Orders of the Senate for the duration of the present session on 22 September 1987. It purports to apply to Joint Committees of both Houses of the Parliament. It also purports to permit them to sit for limited purposes but to prohibit them from making resolutions or taking votes unless all members of the Joint Committees are present. It otherwise purports to prohibit sittings during the sittings of the Senate unless by special Order of the Senate.

7. I confirm the essence of the previous advice that the PAC is not subject to Standing Orders or other Orders of the Senate with respect to times and places of sittings of the PAC. Such orders would be inconsistent with s.6A(1) of the Act, which of course is a provision that was passed by both Houses of Parliament, including the Senate, which must prevail. I therefore advise that the PAC is not constrained by Sessional Order 300A.

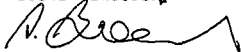
8. Furthermore, I note that Sessional Order 300A, in purporting to prescribe a quorum for a Joint Committee with respect to the passing of resolutions and the taking of votes, is clearly inconsistent with s.7 of the Act, which provides for a quorum of 6 and for all questions to be decided by a majority of the votes of members present.

9. You have also asked whether, in view of the provisions of the Act, the Senate is able to direct senators not to attend meetings of the Committee during sittings of the Senate. You mention that this was foreshadowed by the President of the Senate in a statement he made to the Senate on 1 November 1988.

10. The possibility of action of this kind was foreshadowed in this Department's advice of 30 January 1987 which mentioned the possibility of a resolution forbidding senators from attending PAC meetings while the Senate was sitting, and of disciplinary action against them for breach of that resolution. It was pointed out that such action would not prevent the PAC from meeting as it has a quorum of 6, and 10 of its members are appointed by the House of Representatives.

I do not myself think that on a correct interpretation of the law the Senate could, by resolution, prevent senators attending meetings of the PAC in the foreshadowed circumstances. Parliament has, in the ACT, constituted the PAC and provided in s.6A(1) for it to determine its own times and places for meetings.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P. Brazil', with a long, sweeping horizontal stroke extending to the right.

P BRAZIL



1.274

PRESIDENT OF THE SENATE

PARLIAMENT HOUSE  
CANBERRA

13 OCT 1988

Mr R.E. Tickner, MP  
Chairman  
Joint Parliamentary Committee of  
Public Accounts  
Parliament House  
CANBERRA ACT 2600

*Robert*

Dear Mr Tickner

You will be aware that in 1983 the Standing Orders Committee of the Senate presented a report expressing the view that the Public Accounts Committee is bound by the prohibition on meetings of committees during sittings of the Senate. The Committee reported that a view apparently taken by the Public Accounts Committee that its statute authorised it to meet during sittings of the Senate was mistaken. The Senate indicated its agreement with the report by adopting it. The Standing Orders Committee reported last year in response to a report by the Public Accounts Committee and again set out, in some detail, its view that the claim by the Public Accounts Committee to a right to meet during sittings of the Senate was misconceived. The Standing Orders Committee suggested that the Senate might wish to reconsider its prohibition on committee meetings during sittings of the Senate.

On 22 September 1987, having considered the matter, the Senate adopted new standing order 300A, which provides that Senate and joint committees may meet during sittings of the Senate for the purpose of deliberating in private session, but may not otherwise meet during sittings of the Senate except in accordance with an order of the Senate.

My attention has been drawn to the attached schedule of meetings of the Public Accounts Committee, which indicates an intention on the part of the Committee to hold public meetings during sittings of the Senate.

The Senate having so recently and so deliberately adopted the new standing order, I believe I have a duty to draw to the attention of the Senate the apparent disregard by the Public Accounts Committee of its obligation. Before doing so, however, I am writing to you to give you an opportunity to make any response you may wish to this letter.

Yours sincerely



(Kerry W. Sibraa)



**TIMETABLE OF MEETINGS 1988**

(as at 29 September 1988 - subject to change)

<u>Day/Date</u>	<u>Time</u>	<u>Location</u>	<u>Subject</u>	<u>Form</u>
<b>Non Sitting Week</b>				
<b>Sitting Weeks</b>				
Mon 10 Oct	9.00am- 5.00pm	Reps 2	Audit	Public
Wed 12 Oct	10.00am 1.00pm	Reps 4	Full Committee	Private
Thur 13 Oct	9.00am- 1.00pm	Reps 1	Consultants	Public
Mon 17 Oct	9.00am- 1.00pm	Reps 3	Audit	Public
Wed 19 Oct	10.00am- 1.00pm	Reps 4	Full Committee	Private
*Thur 20 Oct	9.00am- 1.00pm	Reps 1	Ther Goods	Public
<b>Non Sitting Week</b>				
Wed 26 Oct	9.00am- 5.00pm	Reps 1	Defence	Public
<b>Sitting Weeks</b>				
Mon 31 Oct	9.00am- 5.00pm	Reps 3	Defence	Public
Wed 2 Nov	10.00am 1.00pm	Reps 4	Full Committee	Private
Thur 3 Nov	9.00am 1.00pm	Reps 1	Consultants	Private

\*changed since last advice

Mon 7 Nov	9.00am 1.00pm	Reps 2	Antarctic	Public
Wed 9 Nov	10.00am 1.00pm	Reps 4	Full Committee	Private
Thur 10 Nov	9.00am 1.00pm	Reps 1	Ther Goods	Private
<b>Non Sitting Week</b>				
Wed 16 Nov	9.00am- 5.00pm	Canb/Syd/Melb	Consultants	Public/ Inspection
<b>Sitting Weeks</b>				
Mon 21 Nov	9.00am- 5.00pm	Reps 5	Audit	Private
Wed 23 Nov	10.00am 1.00pm	Reps 4	Full Committee	Private
Thur 24 Nov	9.00am 1.00pm	Reps 1	Antarctic	Private
Mon 28 Nov	9.00am- 1.00pm	Reps 2	Defence	Public
Wed 30 Nov	10.00am- 1.00pm	Reps 1	Full Committee	Private
Thur 1 Dec	9.00am- 1.00pm	Reps 1	Antarctic	Private

\*changed since last advice





COMMONWEALTH OF AUSTRALIA  
JOINT PARLIAMENTARY COMMITTEE OF PUBLIC ACCOUNTS

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Hon Senator K W Sibraa  
President  
The Senate  
Parliament House  
CANBERRA

Dear Mr President *Leary,*

Thank you for your letter of 13 October concerning meetings of the Committee.

As you are no doubt aware the substantive issues raised in your letter were exhaustively examined in Report 264 of the Public Accounts Committee. The committee's firm conclusions appear on page 5 of that report.

The report outlines in considerable detail the legal opinions obtained by the Committee to ensure compliance with the Public Accounts Committee Act.

The Public Accounts Committee currently has five major public inquiries in progress and it is simply not possible for the Committee to properly fulfill its responsibilities unless section 6A(1) of the Public Accounts Committee Act 1951 is allowed its full force and effect.

I have discussed this letter with the Vice-Chairman of the Committee, Senator J O W Watson. We would welcome an opportunity to discuss the matter with you.

Yours sincerely

R E Tickner, MP  
Chairman  
18 October 1988

**PUBLIC ACCOUNTS COMMITTEE:  
MEETINGS**

The **PRESIDENT**—The Standing Orders of the Senate contain a prohibition on Senate committees and joint committees of which senators are members meeting during sittings of the Senate. The relevant provision is now contained in new standing order 300A, which was adopted by way of a sessional order on 22 September 1987, and which relaxed the prohibition to the extent of allowing Senate and joint committees to hold only deliberative meetings in private session during sittings of the Senate. Prior to 1983, the Public Accounts Committee adhered to this rule, and, when it wished to meet during sittings of the Senate, sought the permission of the Senate to do so, as do other committees. In 1983, the Public Accounts Committee began to meet during sittings of the Senate without the permission of the Senate. It did so on the basis of a legal opinion to the effect that subsection 6 (A) (1) of the Public Accounts Committee Act, which provides for the Committee or its Chairman to determine its times and places of meeting, empowers the Committee to override the rule contained in the Senate Standing Orders. This situation was considered by the Senate Standing Orders Committee which, in a report presented on 6 October 1983, refuted the view taken by the Public Accounts Committee and recommended that, until the matter was clarified by an amendment of the Public Accounts Committee Act, the Committee should comply with the Standing Orders.

In 1987, the Public Accounts Committee presented a report disputing the views of the Standing Orders Committee and reasserting its belief that it had the power to meet during the sittings of the Senate. The Standing Orders Committee, on 13 May 1987, presented a further report demonstrating that the view taken by the Public Accounts Committee was based on a number of misconceptions. The Standing Orders Committee suggested that the Senate consider whether any relaxation of the prohibition on committee meetings during sittings of the Senate should be made. The Senate considered the matter and adopted new standing order 300A which has already been referred to.

Recently it came to my attention that the Public Accounts Committee was continuing to disregard the decision of the Senate and was holding public hearings during Senate sittings. The Senate having so recently made a deliberate decision as to joint committee meetings during its sittings, I considered that I had a duty to report the actions of the Public Accounts Committee to the Senate.

1704 SENATE 1 November 1988

Before doing so I wrote to the Chairman of the Committee. I table a copy of my letter and the Chairman's response. It is clear from the Chairman's letter that the Committee intends to continue to disregard the decision of the Senate. If the Public Accounts Committee persists in this attitude, it would be open to the Senate to direct that Senators not attend meetings of the Committee during sittings of the Senate. I now place the matter before the Senate for its consideration. I also present to the Senate the relevant extracts from the reports to which I have referred.

Debate (on motion by Senator Bolkus) adjourned.

THE SENATE

STANDING ORDERS COMMITTEE

SIXTH REPORT FOR THE SIXTY-SECOND SESSION

13 May 1987

**STANDING ORDERS COMMITTEE**  
**SIXTH REPORT OF THE SIXTY-SECOND SESSION**

Meetings of the Public Accounts Committee  
during sittings of the Senate

In a report presented to the Senate on 6 October 1983 (First Report of the Sixty-first session) the Committee referred to the prohibition contained in Senate Standing Orders on committees meeting during sittings of the Senate and its application to joint committees of which Senators are members. Until 1983 it was accepted that the prohibition applied to joint committees, including the Joint Committee on Public Accounts, and those committees sought the leave of the Senate if they wished to meet during sittings of the Senate.

In that year, however, the Public Accounts Committee apparently came to the conclusion, based on a legal opinion, that a subsection inserted in 1979 in the statute under which it is established authorises it to meet during sittings of the Senate, and began to hold such meetings without the leave of the Senate. The Standing Orders Committee, in its report, submitted to the Senate that this conclusion is erroneous. The Committee recommended that the Public Accounts Committee Act be amended to put the matter beyond doubt, and that until such amendment is made the Public Accounts Committee should comply with the Senate Standing Orders and not meet during sittings of the Senate without the authorization of the Senate. The relevant part of the Standing Orders Committee report was adopted by the Senate on 1 March 1984.

On 19 March 1987 the Public Accounts Committee presented a report to both Houses of the Parliament, asserting its right to meet during sittings of the Senate, and criticizing the grounds of the Standing Orders Committee report.

Attached to this report as an appendix is a list of the matters referred to by the Public Accounts Committee report, and an examination of them.

It should be noted that the question in issue is not whether a statute overrides an inconsistent provision in the Standing Orders, but whether the statute and the Standing Orders are actually inconsistent. That is the question to which the Standing Orders Committee's previous report was directed.

The Standing Orders Committee considers that this question ought to be resolved. If the claim of the Public Accounts Committee is accepted, this will result in the anomalous situation of one joint committee being in the privileged position of being able to meet during meetings of the Senate, while all Senate Committees and other joint committees do not enjoy that right. It is relevant to note that the interpretation of the Public Accounts Committee would also permit that Committee to meet anywhere as well as at any time during the sittings of the Senate.

The Committee believes that the Senate should commence its consideration of the matter by asking itself whether it wishes to maintain the complete prohibition on committee meetings during the sittings of the Senate. If the Senate's answer to that question is in the affirmative, there would seem to be no justification for discriminating between particular committees of which Senators are members, and the previous recommendations of the Standing Orders Committee, which were adopted by the Senate, should be complied with by the Public Accounts Committee.

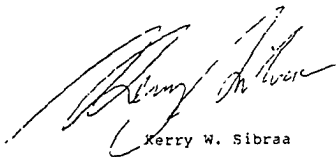
If the Senate considers that the prohibition on meetings of committees during sittings of the Senate should be abandoned, it is submitted that this should apply equally to all committees.

The Senate may wish to consider a compromise, which may overcome any problems involved in the present prohibition. Committees might be allowed to hold private meetings, but not public hearings, during sittings of the Senate. The rationale of this suggestion is that private meetings, being more flexible than public hearings involving prearranged attendances by witnesses and others, are perhaps less likely to prevent Senators from giving due attention to the requirements of the Senate, while allowing committees to proceed with some of their work. A resolution along the following lines would achieve this proposal:

That, notwithstanding anything contained in the Standing Orders, a committee of the Senate and a committee of both Houses of the Parliament may meet in private session during a sitting of the Senate.

The ~~omission~~ omission of the words "in private session" would remove the prohibition completely.

The Committee reiterates that, whatever decision the Senate makes, the matter should be resolved and the present anomalous situation should not continue.



Kerry W. Sibraa  
Chairman

APPENDIXPUBLIC ACCOUNTS COMMITTEE - MEETINGS DURING SITTINGS  
OF THE SENATE

The Public Accounts Committee has presented a report (Report 264, "Public Accounts Committee and the Senate") which responds to the First Report for the 61st Session of the Standing Orders Committee, and asserts, contrary to the report of the Standing Orders Committee and the resolution of the Senate of 1 March 1984 adopting that report, that the Public Accounts Committee has the right, under the Public Accounts Committee Act 1951, to meet during sittings of the Senate. The Public Accounts Committee report contains government legal opinions supporting this view.

The report is based upon a number of misconceptions. The following are the points made by the Public Accounts Committee and the opinions, and responses to them.

1. The rule that Senate Standing Orders apply to joint committees is not really a rule but only a practice (p 2 of the report).

This claim, which is not elaborated, misconceives the basis of parliamentary procedures. Practice is one source of procedural rules, just as common law is one source of law.

That the rule in question is a rule is sufficiently established by the statement at page 592 of House of Representatives Practice: "A joint committee may not sit during sittings of the Senate, unless authorized by the Senate". The reference in that work to a possible qualification in relation to the Public Accounts Committee is referred to below. The point established here is that the prohibition in question is a rule of the Houses.

2. Senate Standing Order 300, which prohibits committees from meeting during sittings of the Senate, applies only to select committees. The report and one of the opinions (pp 2, 11-12) refer to the fact that Standing Order 300 appears in a chapter of the Standing Orders headed "Select Committees", and conclude that it therefore applies only to select committees and not to joint statutory committees.

This argument is based on an ignorance of parliamentary terminology. In strict usage a select committee is any committee other than a committee of the whole. This was made clear in a ruling of Senator Sir Richard Baker:

"All committees which are not committees of the whole Senate are select committees. They may be standing committees or committees appointed to inquire into a Bill, but they are selected. A committee of the whole Senate is not selected because it consists of every Senator. Any committee which is selected out of the Senate is a select committee." (J.R. Odgers, Australian Senate Practice, 5th edition, p 487.)

It follows that a committee of both Houses is a select committee.

At page 2 of the report the Public Accounts Committee appears to argue that because a joint statutory committee is in a different category from other joint committees, a joint statutory committee is fundamentally different in character. The categorization and classification of committees by their mode of appointment provides no basis for any argument that joint statutory committees are entirely free of any constraints which may apply to other joint committees. The report quotes Australian Senate Practice as placing statutory committees in a different category, but ignores the statement at page 520 of that work: "A joint committee is, technically, a select committee".



3. A statutory committee is regulated (only) by its statute. Underlying the claim that the Committee's statute empowers it to meet while the Senate is sitting is an argument that the statute is the only authority to which the Committee is subject. Thus the report states at page 4: "They [Standing Orders] continue to operate in relation to the committees over which the Senate has jurisdiction while the Committee operates under its Act.". Similarly, one of the opinions at page 12 states that "Such a committee [a statutory joint committee] is regulated by the terms of the statute under which it is set up, augmented by any regulations made under that Act".

These statements are based on a fundamental misconception. It is not the case that a joint statutory committee is governed by the statute under which it is established and any regulations thereunder. Such a committee is governed by the legislative provisions and any relevant provisions made by the Houses not inconsistent with the legislation. It is a constitutional principle, of great importance that parliamentary committees are the servants of the Houses which appoint them. The report and the opinions are based on a notion that, once a parliamentary committee is established by legislation, the legislation is its sole authority. According to this contention, a statutory committee is an independent statutory authority not subject to any control by the Houses except in so far as the legislation explicitly provides.

It would be extremely dangerous for the two Houses to countenance any such contention. The establishment of a parliamentary committee by a statute does not make it a creature completely different from all other parliamentary committees. It is still a committee of the Houses, not a statutory authority which happens to have Senators and Members sitting on it.

i.

The acceptance of the argument underlying the report would mean that statutory committees would be free to do whatever they wished, providing that their actions were not inconsistent with anything in the legislation, regardless of any parliamentary rules which might be thought to govern their procedures. Every statutory committee would have to have a complete code of procedure in its statute, lest it determine bizarre procedures contrary to all parliamentary usage. The Houses would be powerless to restrain a statutory committee which engaged in activities utterly beyond its charter.

It should also be noted that the report assumes that the interpretation of the statute is a matter for the Committee itself to determine, and that the Houses may not interpret the legislative provisions. This is also contrary to the basic principle of parliamentary committees being the subordinates of their Houses.

If the statute is the sole determinant of the Committee's powers, this may mean that the authority which finally interprets those powers is not the Committee, nor the Houses but, contrary to the situation of other committees, the courts.

4. The relevant section of the Public Accounts Committee Act plainly means what the Committee believes that it means and requires no interpretation.

It is by no means clear that a provision which states that a committee may meet at such times as the committee determines plainly means that the committee may meet at any time it chooses notwithstanding any contrary rule of the Houses. That is itself an interpretation of the provision. It could be stated with equal certitude that the plain meaning of the provision is that the times of meeting of the committee are to be determined by the methods set out by the provision, as the Standing Orders Committee suggested. It is not helpful

to claim that one interpretation of the statute is the plain meaning while another interpretation is merely an interpretation.

The treatment of the question at page 600 of House of Representatives Practice, to which the Committee refers at page 5 of the report, indicates that the view taken by the Committee is merely a possible interpretation of the statutory provision.

5. The statutory provisions clearly indicate an intention to give the Public Accounts Committee a special status. The Standing Orders Committee suggested that it could not be assumed that, in inserting the relevant provision in the Public Accounts Committee Act the Parliament had an intention to confer a power on that committee not conferred on any other committee, particularly in the absence of any expression of such intention in the parliamentary debates. The report argues that the provision by itself, and the absence of such a provision from the Public Works Committee Act, indicates such an intention (pp 4-5).

It cannot be assumed that every provision in a statute indicates careful thought and a deliberate intention.

A highly pertinent example of this has been recently provided. The Public Accounts Committee Act and the Public Works Committee Act each contain a provision conferring upon witnesses before each committee the protection and privileges of a witness before the High Court (sections 19 and 25, respectively). A similar provision first appeared in the Public Works Committee Act 1913. It was taken from the Royal Commissions Act 1902, apparently without any thought being given to its appropriateness to a parliamentary committee (the relevant clause was not debated in either House). It was then repeated in the Public Works and Public Accounts Committees Acts in 1951, and still applies to those committees.

It is not clear why it was thought necessary to make such a provision. It could not be for the sake of clarity, since the privileges and liabilities of a witness in proceedings in the High Court are not statutorily codified but are a matter of common law. If the provision is meant to supplant the privilege which a parliamentary witness has under the law of parliamentary privilege, this would mean that witnesses before the committees would have less protection than those before a parliamentary committee which does not operate under the provision. Even if one accepts the reading down of article 9 of the Bill of Rights by Justices Cantor and Hunt, a parliamentary witness apparently has a greater protection than this provision would give. In the light of this history, the Senate on 10 October 1986 struck a similar provision out of the legislation establishing the joint committee on the Australian Security Intelligence Organisation.

If the Public Accounts Committee contends that its statute is its sole basis and must be read literally, then it must conclude that its witnesses are inferior in rights to other parliamentary witnesses.

The belief that no thought at all has been given to the provision in question is demonstrated by one of the opinions, which states that the "protection of the Parliament" is applicable to witnesses before the Public Accounts Committee (page 12 of the report). If the provision means anything, it means that witnesses before the committee do not have the same protection as other parliamentary witnesses. Fortunately, the provision in question appears to have been ignored in practice.

It is suggested that, similarly, no thought was given to the apparent contradiction between sub-section 6A(1) of the Public Accounts Committee Act and the Standing Orders of the Senate until the Committee wished to meet during the

sittings of the Senate. This is demonstrated, as the Standing Orders Committee pointed out (as shown at page 21 of the report), by the fact that until 1983 the Public Accounts Committee sought the permission of the Senate when it wished to meet during the sittings of the Senate. The Committee now states (page 1 of the report) that this was merely a matter of courtesy. If that were so, it is odd that the committee should have ceased to be courteous merely because it received opinions indicating that it was free of the relevant constraint.

The position in relation to this matter, therefore, is as follows:

- (1) There is no doubt that the prohibition on meetings during the sittings of the Senate applies to joint statutory committees.
- (2) There is no evidence that sub-section 6A(1) of the Public Accounts Committee Act was intended to confer on the Committee a right, not given to any other Senate or joint committee, to meet while the Senate is sitting.
- (3) It is not clear that the sub-section should be so interpreted.

As the Standing Orders Committee recommended in its report, and this recommendation was adopted by the Senate, the solution to the problem is for the Public Accounts Committee to continue to adhere to the rule which it observed until 1983, until the two Houses, by appropriate amendment of the legislation, determine whether the Committee is to have the special privilege which it claims.