

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO

Group: 2

Program: 1.8

Question No. SBE14/033

Senator Collins asked the following question at the hearing on 20 November 2014:

ACTING CHAIR: Minister, are you aware of any other circumstances where essentially the notice of potential adverse findings process has been done in public rather than in private?

Senator Brandis: I am not, because I do not hold myself out to be a scholar on the practices of royal commissions.

ACTING CHAIR: So, again, the suggestion is that I look at the textbook.

Senator Brandis: No. I am simply saying that it does not strike me as there being anything unusual about that, but you should have great confidence in the fact that the particular royal commissioner that the government has asked to undertake this task, the Honourable Dyson Heydon, is regarded by many, many people in this country as the most eminent lawyer in the land.

ACTING CHAIR: Perhaps that is a question that the Attorney-General's Department could take on notice if there have been other examples where essentially the notice of potential adverse findings process has been conducted in a public way rather than a private way, with respect to a royal commission.

The other issue that was discussed prior to dinner related to, I think, the Attorney quoting some aspects of the letter of 2 October.

The answer to the honourable senator's question is as follows:

Under the *Royal Commissions Act 1902* (Cth) it is for the relevant Royal Commissioner or Commissioners to establish procedures for the conduct of an inquiry, including with regard to the process of making adverse findings against an individual or other entity. It is well accepted that Royal Commission processes must be procedurally fair and afford natural justice to any person subject to a potential adverse finding. Procedural fairness does not require the process of adverse findings to be undertaken in private.

The Royal Commission into Institutional Responses to Child Sexual Abuse (the Child Abuse Royal Commission) has procedures that are similar to those of the Royal Commission into Trade Union Governance and Corruption in that the Child Abuse Royal Commission has published the submissions of Counsel Assisting prior to the publication and tabling of its case study reports. The Child Abuse Royal Commission's Case Study No.2 into the YMCA NSW's response to the conduct of Jonathan Lord provides an example of this process. In that matter, the submissions of Senior Counsel Assisting were made public in December 2013 while the case study report was tabled in the Australian Parliament in July 2014.

To date, the Royal Commission has produced and published final reports for six of its case studies. Copies of the reports into these case studies are available on the Royal Commission's website at <http://www.childabuseroyalcommission.gov.au/public-hearings/case-studies>.