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# Legislative Council - Powers of Select Committees

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Strategic advice  
practical legal solutions



# Introduction

- The New South Wales experience
- Victorian position
- Section 19(1) *Constitution Act 1975*  
'powers, privileges and immunities the House of Commons had on 21 July 1855'



# Recent history of Select Committees

- 1996 – 2006 – 3 Select Committees
  - Urban and Regional Land Corporation
  - Frankston Central Activity District Development
  - Seal Rocks Project (no report was produced)
- November 2006 – present – 2 Select Committees appointed
  - Gambling Licensing
  - Public Land Development



# Possible Explanation – Election of the legislative Council prior to 2006

- 22 electorates returning two members each
- Elected for eight years
- 22 elected every four years
- Preferential voting



## Possible Explanation (cont'd)

- November 2006 Legislative Council
  - Eight electorates
  - Five members from each electorate elected for four years
  - Total of 40 members
  - Elected by proportional representation



# A statutory source

- (1) The Council and the Assembly respectively and the committees and members thereof respectively shall hold enjoy and exercise such and the like privileges immunities and powers as at the 21<sup>st</sup> day of July, 1855 were held enjoyed and exercised by the House of Commons of Great Britain and Ireland and by the committees and members thereof, so far as the same are not inconsistent with any Act of the Parliament of Victoria, whether such privileges immunities or powers were so held possessed or enjoyed by custom statute or otherwise.



## A statutory source (cont'd)

- (2) The Parliament may by Act legislate for or with respect to the privileges immunities and powers to be held enjoyed and exercised by the Council and the Assembly and by the committees and the members thereof respectively.



# Comparison and history

- A similar provision to s 19(1) has existed since 1857
- Similar to the Commonwealth
- Different to NSW: there based on 'reasonable necessity'





# Three questions

- As at 21 July 1855, did the House of Commons have the power, whether by custom, statute or otherwise?
- If the House had that power, has any Victorian Act derogated from it?
- If the House did not have that power, has that power been conferred by a Victorian Act?



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# House of Commons in 1855

- Inquire into any public matter
- Send for persons and papers – not unlimited
- Punish a person for contempt
- Protect members and witnesses



# Committee in 1855 (and now)

- Depended on statute, resolution, standing and sessional orders
- Could not be given power to:
  - Send for papers which would be sought by Address to the Crown
  - Try or punish contempt



# Limitations in 1855 (and now)

- Those arising from the privileges of the Crown:
  - The administration of the government is vested in the Executive
  - See, similarly, s 16A(1)(b)
- Those arising from the requirement of a public subject-matter



## Limitations in 1855 (cont'd)

Those arising from the privileges of the House of Lords:

- Houses independent and equal
- Members accountable solely to own House



# 1855 limitations on documents?

- Documents of public departments needed an Address
- Documents must be public and official, **not** private and confidential
- Executive made and determined claim



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# What kinds of documents?

- High level communications, policy documents (Cabinet)
- Documents in their nature secret or otherwise confidential
- Documents relating to private affairs



# What statutory restraints?

- Confidentiality and secrecy provisions
- The *Public Administration Act 2004* and the Code of Conduct
- The *Constitution Act 1975*, s 95?





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# Any additional statutory powers?

- *Parliamentary Committees Act 2003*
- *Constitution Act 1975, s 19A*
- Bill of Rights provisions



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# How will the Legislative Council deal with various categories of documents and witnesses

- Cabinet documents
  - Exempt



## **How will the Legislative Council deal with various categories of documents and witnesses (cont'd)**

- Members of Parliament
  - Members of the Legislative Assembly
  - Members of the Legislative Council
  - Ministers
  - Former Members of Parliament
- Ministerial Advisers



## **How will the Legislative Council deal with various categories of documents and witnesses (cont'd)**

- Public Servants
  - 2007 Code of conduct
    - Not entitled to your personal views on government policy
    - Not details considered to be ministerial or government decision
    - Not issues that require personal judgment on policies or policy options



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## **How will the Legislative Council deal with various categories of documents and witnesses (cont'd)**

- Guidelines for appearing before State Parliamentary Committees DPC October 2002
- Victorian Parliament Guidelines for Protection of Witnesses



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## **How will the Legislative Council deal with various categories of documents and witnesses (cont'd)**

- Legal professional privilege
- Private documents



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# Matters to consider when responding to a summons for documents

- Terms of reference of the inquiry
- Types of document
- Proper searches and inquiries
- Establish protocols for documents early
- Agree protocols with other departments
- Consider who else may have government documents in their possession, seek Minister's advice as to claims of privilege or immunity



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# Conclusion

- Select Committee likely to be a permanent feature
- Political process