The limits of transparency in parliamentary committee inquiries: Lessons from the NSW inquiry into past adoption practices

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Abstract: This article explores the challenge parliamentary committees face in balancing transparency with the need to protect individual privacy. It uses the inquiry into adoption practices in New South Wales (1998-2000) as a case study, in which the Social Issues Committee resolved to keep 293 submissions from individuals confidential due to their sensitive content and the practical difficulty of redacting them. While this decision prioritised the privacy and safety of individuals, it also attracted criticism for creating 'archival silence', by limiting public access to the evidence and affecting how the inquiry's findings have been understood over time. Furthermore, not all the contributors intended their submissions to be kept confidential, and the decision reduced opportunities for public scrutiny. This article examines this decision within the context of the late 1990s, when technological, procedural, and resource constraints shaped how committees handled evidence. It also considers the broader consequences for transparency, accountability, and restorative justice within parliamentary inquiries.

INTRODUCTION

New South Wales Legislative Council committees operate with a tension – how can they conduct inquiry activity transparently, while protecting the privacy, dignity, and safety of individuals? This challenge is heightened when committees examine complex social policy issues involving personal accounts of systemic injustice, or serious allegations of wrongdoing.

This article is an edited version of a paper originally written in January 2026.[1] It explores the tension within parliamentary committee inquiries through the case study example of the inquiry into adoption practices in New South Wales (1998-2000).

The article examines how parliamentary committees managed highly sensitive evidence at the time of the inquiry, and how it influenced the Social Issues Committee to keep 293 submissions from individuals with lived experience confidential. While this decision protected privacy, some stakeholders argued that it has created 'archival silence' by limiting the publics access to submissions and shaping how the public interrogates the evidence and how the inquiry findings and recommendations have been scrutinised and understood over time.[2] It concludes by identifying potential reforms, such as improved consent processes, clearer publication protocols, and time-based access controls, that may better balance transparency, privacy, and trust in parliamentary committee inquiries.

THE ROLE AND FUNCTION OF NSW LEGISLATIVE COUNCIL COMMITTEES

Parliamentary committee inquiries are among the most important mechanisms of accountability in the New South Wales Legislative Council. Dating back to 1825, inquiries have evolved to become a structured way for the Legislative Council to scrutinise government and review proposed laws.[3] They also provide a public forum for debate on complex social issues, allowing community members to share their views on matters of critical importance.[4]

By convention, committee inquiries are usually conducted publicly. This reflects the principle that parliamentary proceedings should be transparent and accessible.[5] Submissions are a primary way for committees to canvass community views and gather expert knowledge.[6] When

[1] This article was first written for the Parliamentary Law, Practice and Procedure Course, submitted in January 2026.

[2] See for example, Standing Committee on Social Issues, Minutes No 2, 11 October 2023; Standing Committee on Social Issues, Minutes No 3, 7 December 2023; Standing Committee on Social Issues, Minutes No 16, 6 February 2025; New South Wales, Parliamentary Debates, Legislative Council, 20 September 2012, p 15510; Standing Committee on Social Issues, Minutes No 3, 7 December 2023; Standing Committee on Social Issues, Minutes No 16, 6 February 2025.

[3] Stephen Frappell and David Blunt, *New South Wales Legislative Council Practice* (Second Edition, The Federation Press, 2021), p 726.

[4] Sarah Moulds, 'Committees of Influence: The Impact of Parliamentary Committees on Law Making and Rights Protection in Australia' (2019), AIAL Forum 97, p 12.

[5] Frappell and Blunt, *New South Wales Legislative Council Practice* (2021), p 750.

[6] Frappell and Blunt, *New South Wales Legislative Council Practice* (2021), pp 761-763.

a submission is received, it remains confidential until the committee reviews it and resolves to publish it, making it available online for all interested parties to read. On occasion, committees may exercise discretion and keep some evidence confidential either at the request of the author, or to protect privacy, or for other sensitive reasons.[7] Nonetheless, once accepted by a committee, authors benefit from parliamentary privilege. This means that they are immune from defamation and other civil and criminal proceedings in relation to the evidence provided.[8]

PARLIAMENTARY PRIVILEGE AND PROCEDURAL FAIRNESS

Parliamentary privilege is a set of rights and immunities that protect the activities of parliament, including committees, ensuring they can perform their functions without fear of external interference or legal consequence.[9] Unlike other jurisdictions, New South Wales has never codified a Parliamentary Privileges Act, instead, privilege is upheld through a combination of sources:

- Article 9 of the *Bill of Rights Act 1689* - guarantees freedom of speech in Parliament[10]
- Section 27 of the *Defamation Act 2005 (NSW)* - provides that all documents connected with the 'proceedings of the House' are protected from defamation claims[11]
- Section 12(1) of the *Parliamentary Evidence Act 1901* (NSW) - provides assurance against legal reprisal for evidence given to a parliamentary committee, under oath or otherwise[12]
- Common law doctrine of 'reasonable necessity' - grants NSW Parliament implied

[7] Frappell and Blunt, *New South Wales Legislative Council Practice* (2021), pp 761-762.

[8] Susan Want and Jenelle Moore, *Annotated Standing Orders of the New South Wales Legislative Council*, (The Federation Press, 2018), p 728.

[9] See for example: Frappell and Blunt, *New South Wales Legislative Council Practice* (2021), pp 59-60; Erskine May, UK Parliament, 'What constitutes privilege'. Accessed at: https://erskinemay.parliament.uk/section/4570/what-constitutes-privilege/; Parliament of Australia, 'Infosheet 5 – Parliamentary Privilege'. Accessed at: https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/00_-_Infosheets/Infosheet_5_-_Parliamentary_privilege

[10] *Bill of Rights 1689 (Imp)* art 9

[11] *Defamation Act 2005* (NSW) s 27.

[12] *Parliamentary Evidence Act 1901* (NSW) s 12(1).

> powers and immunities essential for legislating and holding the executive accountable.[13]

Although privilege protects individuals from legal consequences, inquiry participants are reminded that committee inquiries are not a forum to make adverse comments about specific individuals.[14] This is because the primary purpose of inquiries is to examine broader systemic issues rather than investigate individual grievances.

To facilitate fairness during the inquiry process, the NSW Legislative Council adopted the Procedural Fairness Resolution in 2018, which outlines the rights and responsibilities for inquiry participants.[15] As outlined in the resolution, if committee members believe that evidence adversely reflects on an individual, the committee will consider redacting or, in exceptional circumstances, expunging the evidence. This ensures the essential function of committees is upheld while protecting third-party privacy and reputation, especially when it may cause serious harm.[16]

Prior to the adoption of the Procedural Fairness Resolution, procedural protections were based on standing orders, ad hoc resolutions and longstanding practices, that were sometimes inconsistent, and led to frustration for some inquiry participants.[17] Without clarity and established safeguards, committees struggled to balance transparency with the need to protect the privacy, dignity and safety of individuals. The consequences of this procedural uncertainty were demonstrated in the inquiry into adoption practices in New South Wales.

[13] The common law doctrine of 'reasonable necessity' was established by the Privy Council in *Kielley v Carson*, and subsequent case law from the High Court of Australia and the New South Wales Supreme Court, see *Fenton v Hampton* (1858) 14 ER 727; *Barton v Taylor* (1886) 11 AC 197; *Norton v Crick* (1894) 15 LR (NSW) 172; *Armstrong v Budd* (1969) 71 SR (NSW) 386; *Egan v Willis and Cahill* (1996) 40 NSWLR 650; *Egan v Willis* (1998) 195 CLR 424; Egan v Chadwick (1999) NSWLR 563.

[14] Frappell and Blunt, *New South Wales Legislative Council Practice* (2021), pp 822-823; NSW Legislative Council, 'Making a submission', (Factsheet); NSW Parliament, 'NSW Legislative Council witness briefing' (YouTube, 21 April 2023), <www.youtube.com/watch?v=m3VVgLuNKEw>.

[15] NSW Legislative Council Privileges Committee, *Procedural Fairness for Inquiry Participants* (Parliament of New South Wales, 2018).

[16] Frappell and Blunt, *New South Wales Legislative Council Practice* (2021), pp 818-819.

[17] NSW Legislative Council Privileges Committee, *Procedural Fairness for Inquiry Participants* (2018), p vii.

CASE STUDY: INQUIRY INTO ADOPTION PRACTICES IN NEW SOUTH WALES

In June 1998, the NSW Legislative Council referred to the Standing Committee on Social Issues an inquiry into adoption practices in New South Wales ('past adoption practices'). The inquiry examined coercive and unethical practices that took place between 1950 and 1998, when many unmarried mothers were pressured by professionals, including social workers, doctors and nurses, to relinquish their children.[18]

Submissions to the inquiry into past adoption practices

During the inquiry, the committee received 306 submissions, including 13 from government agencies and organisations, which were made publicly available.[19] The other 293 submissions were from individuals with lived experience, which the committee resolved to keep confidential as authorised by the standing orders.[20] This blanket approach to submissions proved to be a contentious decision.

As discussed previously, inquiries are usually conducted openly and transparently, however committees may decide to restrict publication of evidence to protect privacy or prevent reputational harm. In the inquiry into past adoption practices, many submissions contained serious allegations against doctors, nurses, and social workers (amongst others), along with highly sensitive material, such as the identity of children and medical records. Because many submissions were handwritten and the volume of sensitive material was so great, redacting this evidence was impractical.

Landmark public forum

In light of the committee's decision to keep the 293 submissions confidential, and to ensure survivors' voices were heard, the committee held 10 public hearings, as well as a landmark

[18] NSW Legislative Council Standing Committee on Social Issues, *Releasing the past* (2000), pp iv and xiii.

[19] In 1998-1999, "public" submissions were available to view in-person from the Table Office, and submission authors were advised their submission could be read (and possibly photocopied) by anyone who made an appointment with the Clerk's Office.

[20] NSW Legislative Council Standing Committee on Social Issues, Minutes No 52, 6 December 2000.

public forum held in the Legislative Council chamber on 18 October 1999.[21] The public forum provided an opportunity for 28 mothers and adoptees to share their personal stories of forced adoption, including being denied access to their babies, and being coerced into signing consent forms to relinquish their children. The committee then made the unprecedented decision to publish the transcripts in two interim reports (November 1998 and June 2000), with the names of third-party individuals replaced with job titles, and witnesses with codes (e.g. 'Witness K'), making the evidence easily available to the public without risking reputational harm or breaching privacy.[22]

Report and findings

The committee tabled its final report, *Releasing the Past*, on 8 December 2000. The report contained 20 recommendations, including to improve adoption services, establish post-adoption support, and for the government to issue a formal apology to those who had suffered as a result of past adoption practices.[23] The core message was that many women did not freely 'give up' their children, and that forced adoption practices had caused deep and lasting harm for mothers, adoptees, families, and future generations.

The 2012 apology and ongoing debate

On 20 September 2012, both Houses of NSW Parliament formally apologised for the State's role in forced adoption. The event was attended by many who had suffered as a result of these practices. Leaders from across the Parliament acknowledged the courage of mothers and adoptees, many who had shared their personal stories during the inquiry. Premier Barry O'Farrell acknowledged the role of the Social Issues Committee in exposing these injustices:

> *We have come to know about this shameful episode of our history because of the courage, commitment and strength of many individuals: mothers, fathers, people adopted as children, who refused to stay silent about the injustices they suffered. Their mistreatment was first publicly acknowledged*

[21] NSW Legislative Council Standing Committee on Social Issues, *Interim Report: Inquiry into adoption practices* (November 1998); Standing Committee on Social Issues, *Second Interim Report: Inquiry into adoption practices* (June 2000).

[22] Standing Committee on Social Issues, *Second Interim Report: Inquiry into adoption practices* (June 2000), p x.

[23] Standing Committee on Social Issues, *Releasing the past* (2000), pp xiv-xvi.

> *by this Parliament in the December 2000 report, entitled 'Releasing the Past', of an inquiry into those past adoption practices.*[24]

Other members, including Hon Jan Barham MLC and the Hon Luke Foley MLC, honoured the strength of inquiry participants and the importance of their evidence.[25]

One of the inquiry participants, Lyn, addressed the Legislative Assembly with a powerful poem, *The Child You Stole Was Mine*, sharing her lifelong grief and sense of injustice.[26] The poem concludes:

> *I lost the child for whom I grieve*
>
> *It wasn't my plan for him to leave.*
>
> *You forced us to live apart*
>
> *How do a stranger and I start*
>
> *To cover the intervening years*
>
> *And the reason for all those tears*
>
> *One thing I need you to know*
>
> *Pain everlasting does not show*
>
> *Something I will never forget*
>
> *Nor will others, you can bet*
>
> *To the outside world there is no sign*
>
> *But the child you stole, was mine!*[27]

[24] New South Wales, *Parliamentary Debates*, Legislative Assembly, 20 September 2012, p 15540.

[25] New South Wales, *Parliamentary Debates*, Legislative Council, 20 September 2012, pp 15508-15510.

[26] New South Wales, *Parliamentary Debates*, Legislative Assembly, 20 September 2012, pp 15538-15539.

[27] New South Wales, *Parliamentary Debates*, Legislative Assembly, 20 September 2012, pp 15538-15539.

Despite the apology and subsequent media coverage, some stakeholders continue to vent their disappointment with the committee and the decision to keep 293 submissions confidential. Advocates have argued that many authors expected their submissions to be made public, and that publishing these stories would deepen the public's understanding of past adoption practices.[28] This was supported by the Hon Jan Barham MLC, who said that publishing the submissions would assist ongoing research and help inform redress efforts:

> *Those who made submissions to the New South Wales inquiry expect that their submissions will be made publicly available to allow others to read of the personal experiences, to better understand the pain and suffering.*[29]

PARLIAMENTARY CONSTRAINTS AND PROCEDURAL DISCRETION

The inquiry into past adoption practices highlights the tension between a committee's control over evidence and the public's expectation of openness and transparency. Under the standing orders, committees can decide whether evidence is published, redacted, or kept confidential.[30] Although these rules are intended to support their work, decisions are often shaped by practical limits such as time, staffing and resources.[31]

In this case, the committee's decision to keep all personal submissions confidential was influenced by both the volume of submissions and by their sensitive and personal content. Many were handwritten or contained serious allegations or identifying details, making it difficult to redact for safe publication. As a result, the decision to keep them all confidential reflected practical challenges as well as concerns about risk and harm.

However, for the women and the adopted children at the centre of the inquiry, this approach may have created a sense that the committee, rather than the individuals themselves, controlled their stories. This highlighted the challenge for committees in handling sensitive evidence while also meeting expectations for transparency, accountability and justice.

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[28] Standing Committee on Social Issues, Minutes No 2, 11 October 2023; Standing Committee on Social Issues, Minutes No 3, 7 December 2023; Standing Committee on Social Issues, Minutes No 16, 6 February 2025.

[29] New South Wales, *Parliamentary Debates*, Legislative Council, 20 September 2012, p 15510.

[30] Susan Want and Jenelle Moore, *Annotated Standing Orders of the New South Wales Legislative Council*, (The Federation Press, 2018), pp 728-729.

[31] Susan Want and Jenelle Moore, *Annotated Standing Orders of the New South Wales Legislative Council*, (The Federation Press, 2018), p 760.

Committees as quasi-restorative spaces and their limitations

Public inquiries often carry the promise of restorative justice, by offering survivors a platform to share their experiences and contribute to systemic reform. However, parliamentary committees are not courts of law, and it is not their usual role to determine guilt or fully test the accuracy of claims made by participants. Instead, their role is to examine broader systemic issues which can help inform policy reform.[32] In some instances, committees restrict themselves from discussing ongoing criminal and civil legal matters, in accordance with the s*ub judice* convention.[33]

Parliamentary committees are political bodies with broad investigative powers, however, unlike courts, parliamentary committees do not operate with the same level of scrutiny applied in courts or tribunals.[34] This means that evidence may go untested and can potentially cause reputational harm.[35] Parliamentary committees are viewed as more flexible and less formal, compared to the tightly controlled nature of judicial scrutiny.[36]

Parliamentary privilege plays an important role in this context. It protects participants allowing them to speak freely, but also allows allegations to be made without the usual legal constraints or consequences. Statements made to committees cannot be challenged in court, and those named may have limited options for response or redress. As a result, some have argued this protection can be used in ways that go beyond its original intent.[37]

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[32] Matthew Johnson, 'Informal Evidence' in Committee Inquiries: A Case for its Wider Use' *Australasian Parliamentary Review 40(1),* 2025, pp 36-40; Peta Leeman and Arizona Hart, 'The (in)adequacy of protections for witnesses to

parliamentary committee inquiries: recent experience in the NSW Legislative Council', *Australasian Parliamentary Review 39(2)*, pp 71-77.

[33] The *sub judice* convention is a practice whereby members of the House refrain from making reference in proceedings to matters before the courts where this could prejudice proceedings or harm specific individuals, see Frappell and Blunt, *New South Wales Legislative Council Practice* (2021), 770.

[34] Privileges Committee, 'Procedural Fairness for Inquiry Participants', Legislative Council, New South Wales Parliament, 28 June 2018, pp 1-3.

[35] Peta Leeman and Arizona Hart, 'The (in)adequacy of protections for witnesses to parliamentary committee inquiries: recent experience in the NSW Legislative Council', *Australasian Parliamentary Review 39(2)*, p 88.

[36] Sarah Moulds, ' Democratic and Judicial Review of Enacted Laws in Australia: A Case Study of the Rights Scrutiny Work of Australian Parliamentary Committees', Revue générale de droit, pp 88-89.

[37] See; Jarryd Bartle, 'What is Parliamentary Privilege in Australia' (Web Page, 23 June 2023), www.sydneycriminallawyers.com.au/blog/what-is-parliamentary-privilege-in-australia; Gareth Griffith,

Despite these protections, committees still try to manage the risks of potentially harmful or defamatory material. One way they do this is by controlling what evidence is made public. The Procedural Fairness Resolution states that where evidence may seriously damage the reputation of a person or body, the committee 'may consider keeping some or all of the evidence confidential'.[38] However, this discretion is not always well understood by inquiry participants, which can lead to confusion and frustration.

In recent years, the NSW Legislative Council has taken steps to better manage expectations and handle evidence responsibly. These improvements include:

- authors can now lodge their submissions through an online portal and clearly indicate their publication preference
- committees will notify authors if their evidence will be made public or confidential, and allow them to rewrite and resubmit their submission if appropriate
- adverse mention and sensitive material can be easily identified and redacted (rather than withholding the entire submission)
- third-party individuals may be given an opportunity to respond to allegations made in evidence.[39]

It is important to note that these safeguards were not standard practice at the time of the inquiry into past adoption practices.

The digital shift and the evolving meaning of 'public'

Another significant development that has occurred since the inquiry into adoption practices (1998-2000) has been the rapid expansion of the internet, and the increased accessibility of parliamentary materials. This digital shift has fundamentally changed what it means for a submission to be considered 'public'.

In the late 1990s, public submissions were only available in-person from the Table Office, and submission authors were advised their submission could be read (and possibly photocopied)

'Parliamentary Privilege: Use, Misuse and Proposals for Reform' (Briefing Paper No 4/97, NSW Parliamentary Library Research Service, 1997) p 45; Richard Best, 'Freedom of Speech in parliament: Constitutional safeguard or sword of oppression?', Victoria University of Wellington Law Review, 1994, 24(1), 91–102.

[38] Privileges Committee, 'Procedural Fairness for Inquiry Participants', Legislative Council, New South Wales Parliament, 28 June 2018, p 2.

[39] Privileges Committee, *Procedural Fairness for Inquiry Participants* (2018), p 4.

by anyone who made an appointment with the Clerk's Office. This practice changed in 2000 when NSW Parliament launched a new website that improved access to inquiry documents. For the first time, authors could lodge their submissions electronically and indicate whether they wanted their submission to be made public or kept confidential.[40] Procedural changes continued to evolve, and by 2011 most committees routinely published submissions online, and by 2015 the default assumption was that all submissions would appear on the inquiry website unless confidentiality or concerns of adverse mention were raised.[41]

Without an understanding of this historical context, the Social Issues Committee's decision to keep 293 submissions confidential has led a small number of stakeholders to assume the committee deliberatively sought to restrict the public's access to the inquiry documents. In reality, the digital systems, redaction processes, and publication protocols now in place did not exist at the time. It is also important to consider that submission authors in 1998 and 1999 had not consented to online publication, and applying these practices retrospectively could expose authors and others to serious harm and re-traumatisation.

Committee authority after dissolution of Parliament

Another procedural constraint is that the current Social Issues Committee cannot overturn decisions made by previous committees. This means its ability to revisit the decision to keep 293 submissions confidential is limited.

When the 52nd Parliament dissolved on 28 February 2003, the Social Issues Committee, as it stood, ceased.[42] Under the standing orders, committees are established by the House and only exist for the duration of a single Parliament (usually four years). While there is some debate about whether committees can continue operating during prorogation, it is generally accepted that committees lose all authority once Parliament is dissolved. At that point, they cannot meet, make decisions, or revise prior ones.[43]

Although the inquiry into past adoption practices spanned both the 51st and 52nd Parliaments, this was only possible because the House explicitly authorised it. On 25 May 1999, the Social

[40] NSW Legislative Council, *Annual Report 1999-2000*, p 36.

[41] Want and Moore, *Annotated Standing Orders of the New South Wales Legislative Council* pp 727-732

[42] NSW Legislative Council, *Annual Report 2003, Volume 1*, p 7.

[43] Susan Want and Jenelle Moore, *Annotated Standing Orders of the New South Wales Legislative Council*, (The Federation Press, 2018), pp 677-678.

Issues Committee was reconstituted and formally authorised to consider evidence from the earlier committee.[44] Without this formal resolution of the House, the Social Issues Committee could not have continued the inquiry or relied on prior evidence.

Custody of inquiry records

Under Standing Order 51(4), the Clerk of the NSW Legislative Council holds custody of all committee inquiry records once they are tabled, and they become records of the House. These documents cannot be removed unless authorised by a resolution of the House or, if the House is adjourned for more than two weeks, by approval of the President.[45]

Other Australian jurisdictions have varied approaches to access and custody of historical committee records including time-based controls for confidential material. For example, in the Australian Senate, as well as the Queensland and Victorian Parliaments, confidential committee records remain in the custody of the Clerk once tabled, and may be released after 30 years, subject to approval by the relevant presiding officer.[46]

Comparatively, Royal Commission records are retained permanently by the National Archives, and confidential Royal Commission material can only be released after 99 years.[47] This reflects the historical importance of these records and ensures that the documents are preserved for future generations, while also safeguarding privacy during the lifetimes of those involved.

RESPONSBILE RECORD KEEPING AND ITS INFLUENCE ON COLLECTIVE MEMORY

As outlined above, parliamentary clerks are custodians for committee inquiry records, and accurate record keeping is essential to the functioning of Parliament. Without reliable records, members of parliament could not effectively make legislation or hold governments to account. However, archives are not neutral repositories of information, and decisions about what is made public and what is kept confidential can shape society's collective memory.[48]

[44] New South Wales, *Parliamentary Debates*, Legislative Council, 25 May 1999, p 293.

[45] New South Wales Legislative Council, *Standing Order SO 51(4)*.

[46] Australian Senate, *Standing Order SO 37(3)*; Queensland Parliament. *Standing Order SO 20*; Legislative Council of Victoria *Standing Order SO 19.04*.

[47] *Archives Act 1983* (Cth) ss 3(7), 22; *Royal Commissions Act 1902* (Cth) s 6OM.

[48] Joan Schwartz and Terry Cook, 'Archives, Records, and Power: The Making of Modern Memory' (2002), Arch*ival Science 2* 1-19.

As prominent Aboriginal researcher and historian Rodney G. S. Carter observed, archives are ‘spaces of power’ which can provide a platform for certain narratives while suppressing others.[49] Scholars describe this as ‘archival silence’ - the gaps created when records are destroyed, omitted, or withheld.[50] In a parliamentary committee context, decisions about whether to publish evidence can influence how the public interpret the committee's findings.[51] If submissions remain unpublished, the committee risks erasing these voices, and potentially perpetuating systemic injustices. Conversely, indiscriminate publication can expose individuals to harm.

Parliamentary archives often include accounts of trauma, including coercion, abuse, and systemic failures. Researchers describe these as repositories of ‘trauma and pain’, particularly when they document accounts of human suffering and injustice.[52] While these records are essential for historical accuracy, they can profoundly affect those who engage with them.

These ethical challenges are even greater in today's digital age. Digitisation makes records more accessible, but it also increases the risk of privacy breaches and re-traumatisation. As access expands, questions arise about who controls information, who is represented, and who might be harmed. Archivist and author Margot Note wrote:

> *Archivists operate between information stewardship and public accountability, often navigating conflicting expectations of transparency, privacy, ownership, and access … As institutions digitise records and expand online access, new questions arise: Who controls the data? Who is represented - or misrepresented? Who might be harmed?*[53]

The idea that greater transparency is always beneficial has also been questioned. Researcher Ellen LeClere illustrated how digitisation of records can sometimes have unintended consequences. She wrote that archives in liberal democracies can create a sense of accountability, but often come at the expense of marginalised groups:

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[49] Rodney G.S Carter, 'Of Things Said and Unsaid: Power, Archival Silences, and Power in Silence' (2006) 61 *Archivaria*, p 216.

[50] Michael Moss and David Thomas (ed), *Archival Silences: Missing, Lost and Uncredited Archives*, (Routledge, 2021).

[51] David Thomas, Simon Fowler and Valerie Johnson, *The Silence of the Archive*, (Facet Publishing 2017), p 1.

[52] Chryl Regehr et al, 'Development of the trauma-informed archival practices scale', (2025), Arch Sci 25.

[53] Margot Note, 'The Archivist's Dilemma: Ethical Approaches to Surveillance', (2025), Think Clearly Blog.

> *… access to archives has been historically controlled by privilege and power. While marginalised and underrepresented groups have always been present in archives, their stories have been told 'through the lens of dominant, powerful social groups or societies' … while digital archives create more democratic access, they also create more opportunities for private and/or sensitive information within archives to be disseminated widely, and often without consent.*[54]

For these reasons, responsible record keeping requires recognising that archives shape collective memory and ensuring efforts to improve transparency do not come at the expense of people's privacy, safety and dignity.

WHAT DID THE INQUIRY INTO PAST ADOPTION PRACTICES REVEAL?

The Social Issues Committee's blanket decision to keep submissions from individuals confidential, and the frustrations expressed by some, demonstrates the importance of balancing participants' wishes with third-party safety. Although this decision unintentionally created 'archival silence', where voices of survivors' were accepted by the committee but not publicly available, it did not reflect an intentional effort by the committee to silence individuals. Rather, the archival silence arose from the procedural and resourcing constraints of the time, including technology limitations, procedural gaps, and privacy permissions and expectations of the late 1990s.

Since the inquiry concluded, successive Social Issues Committees have continued to receive requests from stakeholders seeking the publication of the 293 confidential submissions. These stakeholders appear to be unaware that current committees do not have the authority to overturn decisions made during the 52nd Parliament. Nonetheless, the current Social Issues Committee has continued to consult with the Clerk of the Legislative Council and engage with key adoption organisations to carefully consider the risks and benefits of publication, in order to inform its current practices, and to respond to the requests.[55]

[54] Ellen LeClere, 'Breaking rules for good? How archivists manage privacy in large-scale digitisation projects', (2018), *Archives and Manuscripts Vol 46(3),* p 300.

[55] Standing Committee on Social Issues, Minutes No 3, 7 December 2023; Standing Committee on Social Issues, Minutes No 16, 6 February 2025.

LEARNINGS FROM OTHER JURISDICTIONS

Approaches from other Australian jurisdictions offer alternate models that could help guide reform in New South Wales. As explored earlier, the Queensland, Victorian, and Commonwealth parliaments apply time-based access mechanisms that allow confidential material to be released after 30 years, with approval from the presiding officers. Royal Commissions apply an even longer restriction with confidential records becoming available after 99 years. These approaches recognise the historical importance of these documents while also protecting individual privacy.

Other parliaments also provide clear guidance to inquiry participants about what may or may not be included in submissions, particularly in relation to identifying details and adverse mention. For example, the Senate of Canada advises authors that written evidence must not include confidential or sensitive personal information.[56] To an even greater extent, New Zealand's standing orders permit committees to return submissions they consider to be irrelevant, offensive, potentially defamatory, or subject to a court order.[57] These practices help ensure that participants clearly understand how their evidence will be handled and what standards and limitations apply.

CONCLUSION

The inquiry into past adoption practices (1998-2000) demonstrates the significant challenges parliamentary committees face when examining social policy issues involving systemic injustice.

In the 25+ years since the inquiry, the NSW Legislative Council has improved frameworks for managing highly sensitive evidence, placing particular importance on:

- Informed consent – ensuring participants fully understand how their evidence will be used and what can and cannot be included, supported by clear guidelines;
- Safe publication protocols – providing the committee secretariat with the tools and resources needed to review submissions for privacy and adverse mention, and to

[56] Senate of Canada, 'How to participate in a Senate Committee Study: Oral and written evidence' (2021), p 2.

[57] New Zealand House of Representatives, *Standing Order SO 220, which state that a committee 'may return or expunge any evidence or statement that it considers to be irrelevant to its proceedings, offensive, possibly defamatory, or suppressed by an order of a New Zealand court'*.

publish responsibly;

- Careful records management – managing committee records carefully and ethically to maintain transparency while safeguarding the privacy of individuals.

These developments reflect a better understanding that transparency must be balanced with the protection of privacy, dignity, and safety of individuals.

However, these modern standards should not be applied retrospectively without careful consideration. People who provided submissions in 1998 and 1999 did not consent to their stories and evidence being published online in a permanent and easily accessible format. At the time, public access was limited to in-person viewing of the materials in the Table Office. Publishing these records online now could expose submission authors, their families, and third-party individuals to harm, including re-identification, reputational damage, and re-traumatisation.

While transparency measures can always be improved, it is also important to consider and respect the historical conditions under which evidence was originally provided. Responsible stewardship of parliamentary committee records requires a careful, context-sensitive approach that balances openness with the need to avoid further harm. This protects individuals while upholding the integrity, legitimacy and democratic purpose of NSW parliamentary committee inquiries.