

The Senate

The following amendments should be inserted in the ***Standing Orders and other orders of the Senate as at February 2014.***

Amendment of standing orders

24 Scrutiny of Bills

- (1) (a) At the commencement of each Parliament, a Standing Committee for the Scrutiny of Bills shall be appointed to report, in respect of the clauses of bills introduced into the Senate, or the provisions of bills not yet before the Senate, and in respect of Acts of the Parliament, whether such bills or Acts, by express words or otherwise:
 - (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;
 - (iv) inappropriately delegate legislative powers; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
 - (b) The committee, for the purpose of reporting on its terms of reference, may consider any proposed law or other document or information available to it, including an exposure draft of proposed legislation, notwithstanding that such proposed law, document or information has not been presented to the Senate.
 - (c) The committee, for the purpose of reporting on term of reference (a)(iv), shall take into account the extent to which a proposed law relies on delegated legislation and whether a draft of that legislation is available to the Senate at the time the bill is considered.
- (2) (a) The committee shall consist of 6 senators, 3 being members of the government party nominated by the Leader of the Government in the Senate, and 3 being senators who are not members of the government party, nominated by the Leader of the Opposition in

the Senate or by any minority groups or independent senators.

- (b) The nominations of the opposition or any minority groups or independent senators shall be determined by agreement between the opposition and any minority groups or independent senators, and, in the absence of agreement duly notified to the President, the question of the representation on the committee shall be determined by the Senate.
- (3) The committee may appoint sub-committees consisting of 3 or more of its members, and refer to any such sub-committee any matters which the committee is empowered to consider.
- (4) The committee shall elect as chair a member appointed to the committee on the nomination of the Leader of the Opposition in the Senate.
- (5) The committee shall elect as deputy chair a member appointed to the committee on the nomination of the Leader of the Government in the Senate, and the member so elected shall act as chair of the committee when there is no chair or the chair is not present at a meeting of the committee.
- (6) When votes on a question before the committee are equally divided, the chair, or the deputy chair when acting as chair, shall have a casting vote.
- (7) The committee and any sub-committee shall have power to send for persons and documents, to move from place to place, and to meet and transact business in public or private session and notwithstanding any prorogation of the Parliament or dissolution of the House of Representatives.
- (8) The committee may appoint with the approval of the President counsel to advise the committee.
- (8A) The committee shall be empowered to print from day to day any of its documents and evidence. A daily Hansard shall be published of public proceedings of the committee.
- (9) The committee may report from time to time its proceedings and evidence and any recommendations, and shall make regular reports of the progress of the proceedings of the committee.

(Agreed to 15 July 2014)

25 Legislative and general purpose

After paragraph (2), insert:

- (2A) The legislation committees, when examining bills or draft bills, shall take into account any comments on the bills published by the Standing Committee for the Scrutiny of Bills.

(Agreed to 15 July 2014)

26 Estimates

At the end of paragraph (4), add:

If a senator has further explanations to seek, items of expenditure shall not be closed for examination unless the senator has agreed to submit written questions or the committee has agreed to schedule additional hearings for that purpose.

(Agreed to 25 June 2014.)

72 Questions without notice

Omit paragraph (3), substitute:

- (3) (a) The asking of each primary question shall not exceed one minute and answers to them shall not exceed two minutes.
- (b) Two supplementary questions shall be allowed to each questioner, each supplementary question shall be limited to thirty seconds and the answers to them shall be limited to one minute each.
- (c) Answers shall be directly relevant to each question.

(Agreed to 24 June 2014.)

74 Questions on notice

Omit paragraph (5), substitute:

- (5) If a minister does not answer a question on notice asked by a senator within 30 days of the asking of that question, or if a question taken on notice during a hearing of a legislative and general purpose standing committee considering estimates remains unanswered after the day set for answering the question, and a minister does not, within that period, provide to the senator who asked the question an explanation

satisfactory to that senator of why an answer has not yet been provided:

- (a) at the conclusion of question time on any day after that period, the senator may ask the relevant minister for such an explanation; and
- (b) the senator may, at the conclusion of the explanation, move without notice—That the Senate take note of the explanation; or
- (c) in the event that the minister does not provide an explanation, the senator may, without notice, move a motion with regard to the minister's failure to provide either an answer or an explanation.

(Agreed to 25 June 2014.)

Procedural orders and resolutions of the Senate of continuing effect

COMMITTEES

Estimates hearings—Additional hearings—Order of continuing effect

- (1) That, for the purposes of any order setting out a schedule of estimates hearings by legislation committees:
 - (a) if the order provides for hearings, if required, on a designated Friday, an additional hearing of a committee is taken to be required on that Friday if any 3 members of the committee notify the chair in writing of a requirement for the committee to meet, including for a specified period of time;
 - (b) if the order does not provide for hearings, if required, on a designated Friday, an additional hearing of a committee is taken to be required on a relevant Friday if any 3 members of the committee notify the chair in writing of a requirement for the committee to meet, including for a specified period of time.
- (2) For the purposes of paragraph (1), a relevant Friday means any of the following, as the case requires:
 - (a) for additional estimates hearings, the Friday of a week in which committees in Groups A and B are scheduled to meet;
 - (b) for Budget estimates hearings, the Friday of a week in which committees in Group A are scheduled to meet;
 - (c) for Budget estimates hearings, the Friday of a week in which committees in Group B are scheduled to meet;
 - (d) for supplementary Budget estimates hearings, the Friday of a week in which committees in Groups A and B are scheduled to meet.
- (3) The operation of this order is subject to the restriction in standing order 26(3) that not more than 4 committees shall hear evidence on the estimates simultaneously.
- (4) This order is of continuing effect.

(Agreed to 25 June 2014)

Estimates hearings—Additional hearings—Order of continuing effect

- (1) That an additional hearing of a legislation committee considering estimates is taken to be required if any 3 members of the committee notify the chair in writing of a requirement for the committee to meet for that purpose, including for a specified period of time.
- (2) For the purposes of paragraph (1), an additional hearing means a hearing in addition to any hearing required by, or pursuant to, an order of the Senate setting out days for legislation committees to meet to consider estimates or providing for such meetings to be held on spill-over days.
- (3) The operation of this order is subject to the restriction in standing order 26(3) that not more than 4 committees shall hear evidence on the estimates simultaneously.
- (4) This order is of continuing effect.

(Agreed to 25 June 2014.)

Resolutions expressing opinions of the Senate

ACCOUNTABILITY

Legislation Committees—Estimates hearings—Accountability

That the Senate—

- (a) reaffirms:
 - (i) the principle, stated previously in resolutions of 9 December 1971, 23 October 1974, 18 September 1980, 4 June 1984, 29 May 1997 and 25 June 1998, that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the Parliament or its committees unless the Parliament has expressly provided otherwise;
 - (ii) its expectation that officers, including agency heads, will appear before committees in fulfilment of their accountability obligations, whenever their presence is requested by committees;
- (b) in relation to the provision of exceptions to the general principle reaffirmed in paragraph (a), notes and reaffirms:
 - (i) Privilege Resolution 1(16) which provides that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy, and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister;
 - (ii) the resolution of 16 July 1975, relating to the powers of the Senate and the accountability of witnesses, and requiring any claim to withhold information from the Senate to be based on an established ground; and
 - (iii) the order of 13 May 2009 setting out the proper process for raising public interest immunity claims;
- (c) notes that:
 - (i) the statutory values which Australian Public Service agency heads and employees are required to uphold include a requirement to be open and accountable to the Australian community under the law and within the framework of

ministerial responsibility; and

- (ii) the Constitutional framework of checks and balances under a separation of powers places the Parliament in prime position as the agent of accountability, representing the Australian people;
- (d) calls on the Government to issue a general instruction to all public service agency heads and employees about their duty to cooperate with parliamentary committee inquiries, including by formalising the revised guidelines for official witnesses appearing before parliamentary committees (last issued in 1989), a revised draft of which was provided to the Committee of Privileges in 2012 and considered in its 153rd Report; and
- (e) requires:
 - (i) the chairs of legislation committees considering estimates to draw the provisions of paragraphs (a) and (b) of this resolution to the attention of any witness who declines to provide information to a committee on any basis other than those specified; and
 - (ii) the Clerk to draw this resolution, and the resolutions referred to in paragraph (b), to the attention of the heads of all agencies appearing before legislation committees, prior to each round of estimates.

(Agreed to 25 June 2014.)

Powers—Freedom of Information Act provisions

That the Senate—

- (a) notes the frequency with which freedom of information legislation is invoked to withhold information from senators and the Senate, not only by reference to grounds of exemption in the legislation but also apparently on the basis that an answer will not be provided if a Freedom of Information (FOI) request has been lodged for the same information;
- (b) recalls the observations of the Procedure Committee in its Third Report of 1992 that:
 - (i) there is no basis in law for the application of the FOI Act to the production of documents to a House;

- (ii) if a minister were to regard all of the exemption provisions in the FOI Act as grounds on which to claim a privilege against disclosure of information to a House, this would considerably expand the grounds of executive privilege hitherto claimed;
- (iii) the use of the provisions of the FOI Act as a checklist of grounds for non-disclosure does not relieve a minister of the responsibility of carefully considering whether the minister should seek to withhold documents from a House, or from considering the question in the context of the importance of the matters under examination by the House;
- (c) resolves that the same principles apply to the provision of information to committees in response to questions asked by senators, which require the same careful consideration by ministers;
- (d) declares that declining to provide documents or answer questions on the basis that an FOI request has been made for the same information is an unacceptable response, is not supported by the FOI Act and shows a profound lack of respect for the Senate and its committees.

(Agreed to 25 June 2014.)