

CHAPTER 3

Publication of Senate proceedings

As noted in Chapter 1, the Australian Parliament does not possess sovereign powers; it is subject to the Constitution, which only the people can change, so that sovereignty is in fact as well as technically vested in the people.

It is in accordance with this constitutional relationship that the procedures of the Senate are designed to ensure that its operations are communicated to the public to the maximum extent possible. Also, many activities of the Senate, such as committee hearings, are designed to inform the public as much as the Senate, and have their influence through their impact on public opinion as well as on the decisions of the legislators.

Proceedings public

Since the establishment of the Senate all of its proceedings have been conducted in public. The standing orders contemplate that the Senate may meet in private session, but this could occur only by a deliberate decision of the Senate.¹

Documents laid before the Senate are automatically published.²

Provision is made in the Senate chamber for public galleries, for a press gallery and for facilities for radio and television broadcasting.

Any person may attend in the public galleries and observe the proceedings. Visitors in the galleries are required to refrain from any interruption to proceedings or discourtesy to the Senate, particularly any interjection or demonstration of support or dissent in relation to the proceedings.³ A person who wilfully disturbs a meeting of the Senate may be guilty of a contempt.⁴ The chair may order

1 SO 175(2)(a).

2 SO 167; see also Chapter 18, Documents.

3 Ruling of President Givens, SD, 2/12/1914, p. 1237; statement by President McMullin, 25/3/1969, p. 599; by President Sibraa, 8/12/1993, pp. 4162-3.

4 See Chapter 2, Parliamentary Privilege, under Power to punish contempts.

disorderly persons to withdraw from the galleries.⁵ The Usher of the Black Rod, subject to any direction by the Senate or the President, may take into custody any person who causes a disturbance in or near the chamber.⁶

Only senators and officers attending on the Senate may be present on the floor of the chamber when the Senate is meeting. The President may, by leave of the Senate, invite distinguished visitors to take a seat in the chamber.⁷ This procedure is used for visiting presiding officers of foreign or state parliaments. The practice is for the President to inform the Senate of the presence of the visitor and announce that, with the concurrence of the Senate, the President proposes to invite the visitor to take a seat in the chamber.

Journalists who are members of the Parliamentary Press Gallery are provided with a gallery behind and above the President's chair and a soundproofed media workroom above that gallery. Membership of the Press Gallery, granted by the Presiding Officers, entitles a member to admission to the gallery and, subject to arrangements agreed upon by the Presiding Officers and the Gallery Committee, to press office facilities.

Members of the Gallery must abide by conditions which cover such matters as behaviour within the parliamentary precincts, and non-compliance with the conditions by members of the Gallery may result in restrictions on an individual's or organisation's rights of access to Parliament House. A press gallery pass may be withdrawn by the Presiding Officers for breaches of the conditions applying to membership of the Press Gallery.⁸

Places are reserved for advisers to the government and senators in the chamber. Advisers attending on senators are required to behave with decorum and not disturb proceedings.⁹ Subject to that requirement, senators are entitled to have whomever they choose as their advisers in their advisers' benches.¹⁰

Reporting of proceedings

The Journals of the Senate, signed by the Clerk and published, are the official record of the proceedings of the Senate. The debates of the Senate are recorded by the Parliamentary Reporting Staff and are published in the transcript of debate known as Hansard. These documents are further

5 See SD, 13/6/1923, p. 16; 10/5/1973, pp. 1508, 1514-5; 17/10/1973, p. 1307; 18/5/1976, p. 1670.

6 SO 175(4).

7 SO 174, 175.

8 For an inquiry into the conduct of members of the Press Gallery as a possible contempt, see Committee of Privileges, 142nd report, PP 396/2009.

9 Ruling of President Sibraa, 8/12/1993, J.942; statement by chair 22/2/1994, J.1289.

10 SD, 2/12/2005, p. 10.

described below.

Proceedings may also be reported by the media. Fair and accurate reports of proceedings are immune from suit for defamation.¹¹

Broadcasting of proceedings

Proceedings of the Senate and its committees are widely broadcast through electronic media.

Proceedings of the Senate, and proceedings of its committees when they are televised, are available live in sound and visual images on the internet, in accordance with an authorising resolution.¹²

Live radio and television broadcasts of proceedings occur through the Australian Broadcasting Corporation (ABC) radio broadcasts, the televising of question time, and the internal and subscription television service provided by the house monitoring system.

The proceedings of the two Houses of the Parliament have been broadcast on radio since 1946 by the ABC, as required by the *Parliamentary Proceedings Broadcasting Act 1946*. Question time in the Senate has been televised by the ABC since August 1990. These were originally all live telecasts, but since the House of Representatives approved the television coverage of question time in that House, some are re-broadcast. All proceedings in the Senate and in some of its committees are broadcast on radio and television within Parliament House and to external subscribers by the house monitoring system.

Apart from these live broadcasts, radio and television stations are also permitted to use recorded excerpts of Senate proceedings. Resolutions of the Senate first passed on 13 December 1988 and 31 May 1990 (the latter amended on 18 October 1990 and 9 May 1991) set out rules for the use of excerpts, the principal rule being that excerpts are to be used only for the purposes of fair and accurate reports of proceedings.

A resolution of 23 August 1990 authorised Senate committees to permit the broadcasting of their public proceedings, subject to similar rules, and a resolution of 13 February 1991 permitted persons other than television stations to make use of video recordings of Senate proceedings. An order first passed on 14 October 1991 permitted the broadcasting of estimates committee hearings. These provisions were consolidated into a set of broadcasting orders passed on 13 February 1997.

Proceedings of Senate committees conducting public hearings in Canberra are broadcast by radio

11 *Parliamentary Privileges Act 1987*, s. 10.

12 31/8/1999, J.1606.

and television on the house monitoring system, and excerpts are used by the media, in accordance with the order relating to committees. All estimates hearings and most other hearings of Senate committees are televised within Parliament House, and excerpts may be used by broadcasters and other individuals. Resources determine how many committee hearings are broadcast on the house monitoring system and recorded for later use. Committees may also permit other broadcasters to cover their proceedings when they meet outside Canberra. Any coverage must conform with any conditions set by the committees, which must not be inconsistent with the rules adopted by the Senate.¹³

The televising of Senate proceedings was initiated by a motion moved by an Opposition senator. On 30 May 1990, Senator Vanstone gave notice that she would move to permit the televising of question time for a trial period. The Senate resolved the following day to proceed with the trial, but referred to the Procedure Committee the conditions relating to it.¹⁴ The Procedure Committee recommended that no changes should be made, but that the conditions should be tried and reviewed in the light of experience.¹⁵ Two modifications to the order were subsequently made. On 18 October 1990 reference to a trial period was omitted, and on 9 May 1991 the condition prohibiting the broadcasting of the adjournment debate was omitted.¹⁶

Broadcasting and privilege

A publication of a record or report of the proceedings of the Senate or its committees, where the publication occurs by an order of the Senate or a committee, attracts absolute parliamentary privilege.¹⁷ As noted in this chapter, various publications are ordered by the Senate or by committees. Apart from the live publication of proceedings on the internet, however, broadcasts of proceedings do not occur by an order of the Senate or a committee, in that the relevant resolutions permit the use of excerpts selected by the media.

The Parliamentary Proceedings Broadcasting Act confers immunity from legal action on the radio broadcast of proceeding by the ABC, although the terms of the Act are not confined to that particular broadcast.

The Transport and Communications Legislation Amendment Bill 1991, introduced by the government, included provisions to amend the Parliamentary Proceedings Broadcasting Act to

13 Unruly media coverage of hearings of the Economics Legislation Committee in June 2009 were addressed by the Committee of Privileges in its 142nd Report, PP 396/2009.

14 31/5/1990, J.193.

15 First Report of 1990, August 1990, PP 436/1990, p. 1.

16 18/10/1990, J.361; 9/5/1991, J.1006.

17 *Parliamentary Privileges Act 1987*, s.16; see Chapter 2, Parliamentary Privilege, under Preparation and publication of documents.

extend to the televising of the proceedings of the two Houses and their committees the absolute privilege provided by the Act to radio broadcasts of the proceedings of the Houses. In the proceedings on the bill in the Senate on 14 November 1991, the provisions in question were struck out of the bill with the agreement of all parties. It was pointed out that the absolute privilege given to radio broadcasts was enacted when the only broadcast of proceedings was the virtually continuous radio broadcast by the then Australian Broadcasting Commission. When television stations were authorised to televise extracts of proceedings of the Houses and their committees, the question of extending absolute privilege to those broadcasts involved different issues. It was also pointed out that section 10 of the Parliamentary Privileges Act provides privilege for all fair and accurate reports of parliamentary proceedings, and that this cover is probably as much as is appropriate for the televising of extracts. Edited television extracts could constitute highly unfair and inaccurate reports of proceedings and should not have absolute privilege.

Journals of the Senate

The Journals of the Senate are the official record of proceedings in the Senate. The Clerk records all proceedings in the Journals, which are signed by the Clerk. The publication of the Journals for public meetings of the Senate is authorised by standing order 43(1), and therefore attracts absolute privilege.

A Journal is published for every sitting day. It records, among other things, all notices of motion, resolutions, tabling of documents, proceedings on bills including amendments moved to bills, petitions, messages received from the House of Representatives or the Governor-General, divisions and attendance of senators. The Journals are produced from the minutes kept by the Clerk and the sound and vision record of proceedings. A proof Journal of a day's proceedings is printed for distribution on the next day. A final Journal is produced after any necessary corrections are made. A limited number of bound sets of the final Journals is produced for the official record. Proof and final Journals are also published on a database which provides a useful facility for research, and on the internet.

Material recorded in the Journals of the Senate and in the official record of debates (Hansard) may be considered in the interpretation of a provision of a statute to ascertain the meaning of the provision, under section 15AB of the *Acts Interpretation Act 1901*.

Notice Paper

The Notice Paper, which is published for each sitting day, is the list of all business outstanding before the Senate, including bills not finally passed, motions to be moved, motions moved but

not finally dealt with, questions on notice and inquiries before committees.¹⁸ The Notice Paper includes a guide to its use. The full Notice Paper appears on the internet and an abbreviated version is issued in printed form each sitting day. The publication of the Notice Paper is authorised by standing order 43(2), and is therefore absolutely privileged.

Hansard

Debates in the Senate are recorded and published in Parliamentary Debates, more commonly known as Hansard. A proof Daily Hansard is produced, in which errors of transcription may be corrected. Corrected Hansards are then incorporated in a paper bound Weekly Hansard and finally are bound in hard covers for the record. Hansard is also entered in a database for ease of access and electronic searching, and on the internet.

The publication of Hansard is authorised by standing order 43(3), and is therefore absolutely privileged.

Soon after they deliver a speech, senators receive a copy of the transcript from Hansard. Senators may make necessary corrections to the transcript, but changes altering the sense or introducing new matters are not admissible. The President has control over requests for alterations to Hansard. Following an incident in 1989 in which a minister was censured by the Senate for deleting words appearing in the Daily Hansard, the Senate resolved that the President should “enforce strictly the rule that senators’ corrections to Hansard must not have the effect of deleting from the record words actually spoken in debate so as to alter the sense of words spoken”.¹⁹ In a subsequent statement, the President informed the Senate of the procedures for dealing with requests for alterations to the transcript or to the Daily Hansard. The President had asked that “where there is any doubt as to whether the request comes within the established rules”, the matter be referred to him.²⁰

Although Hansard is a record of debate, to save time or to illustrate a point senators often ask to incorporate material in Hansard. This material may include quotations, documents, tables or graphs. As there is no provision in the standing orders for the incorporation of material in Hansard, this is done by leave of the Senate, that is, unanimous consent of senators present. Senators will generally ascertain of senators from other parties whether there is likely to be objection before seeking leave for incorporation.²¹

18 For further details on the Notice Paper and the categories of business listed in it, see Chapter 8, Conduct of Proceedings.

19 7/4/1989, J.1522.

20 SD, 7/4/1989, p. 1186.

21 For the expungement of matter from Hansard, see Chapter 10, Debate, under Rules of debate.

Committee proceedings

Most Senate committees are authorised to meet in public or in private session; the only exceptions are standing committees examining estimates, which must hear all their evidence in public and publish all documents received by them.

Committees usually hear evidence in public and publish all documents laid before them, but occasionally evidence is taken in private session and documents withheld from publication, usually for the protection of witnesses. Committees deliberate in private session.²²

The hearing of witnesses before Senate committees must be recorded in a transcript of evidence.²³ Transcripts of public hearings are published, and committees may order the publication of transcripts of in camera hearings. In either case the publication is absolutely privileged.

Provision is made in standing order 25(16) for the publication of a Daily Hansard of the public hearings of the legislative and general purpose standing committees. Provision is also made in relation to committees examining estimates for a Hansard report to be circulated as soon as practicable after each day's proceedings.²⁴ Resolutions appointing other committees usually authorise the publication of their Hansards.

The transcript or other record of a committee hearing, including a sound recording, belongs to the committee. The question of senators' access to the sound recordings of committee proceedings arose on 29 November 1990, when a senator asked the President about access to tape recordings of a joint parliamentary committee. The President's response setting out the procedures relating to access was as follows:

The responsibility for the transcription of the proceedings of parliamentary committees rests with Hansard. When a transcript is completed, Hansard forwards that transcript in electronic and hard copy form to the committee, which undertakes the printing and distribution of that transcript. The committee subsequently advises Hansard of any suggested corrections to the transcript. Any request to Hansard for access to a tape-recording of the proceedings of a committee or an unproofed version of the transcript is referred by Hansard to the committee for decision. Usually that decision is advised to Hansard by the committee secretary after consultation with the committee chairman. This is what occurred in relation to the matter raised by Senator Vanstone. The principle is that transcripts, both proofed and unproofed, are the property of the committee and it is a matter for each committee to determine access to that material and advise

22 SO 36.

23 SO 35(2).

24 SO 26(7).

Hansard accordingly.²⁵

The Senate, however, may make orders in relation to records of committee proceedings. On 6 December 1990 a senator moved that the Principal Parliamentary Reporter be directed to make available to members of the Parliamentary Joint Committee on the National Crime Authority the Hansard sound recording of the public hearing of that committee held on 21 November 1990, in the absence of a transcript of those sound recordings. That question was passed without debate.²⁶ Audiovisual recordings of estimates hearings are invariably made available to legislation committees in advance of transcripts.²⁷

Other publications

Other documents are produced to report proceedings in the Senate and to inform senators and others of particular matters dealt with during proceedings. Those documents include:

Order of Business (colloquially known as the Senate “Red” after a red flash on the front page), issued each sitting day; sets out the business expected to be considered on that day

Dynamic Red, produced electronically each sitting day and constantly updated to record business transacted by the Senate as it occurs, with links to relevant documents

Senate Daily Summary, produced after each sitting day and recording all significant transactions in the Senate, including committee reports tabled

Business of the Senate, published twice a year and cumulated annually; contains statistical and other data summarising the work of the Senate

Work of Committees, a twice-yearly and cumulative account of the activities of Senate committees, with statistical data

Bills List, published fortnightly after sitting periods; lists all bills currently before the Parliament and summarises the purpose of the bills, the numbers and outcomes of amendments proposed to the bills, the stage reached in their consideration, assent dates and statute numbers

25 SD, 4/12/1990, pp. 4880-1.

26 6/12/1990, J.518.

27 See also Chapter 16, Committees, under Conduct of proceedings, Disclosure of evidence and documents. For the expungement of matter from committee transcripts, see Chapter 17, Witnesses, under Protection of witnesses.

Delegated Legislation Monitor, updated during sittings; summarises the effects of the instruments of delegated legislation tabled during the sitting week and notes the dates the instruments were tabled and made; supplemented by Disallowance Alert (daily) and Scrutiny of Disallowable Instruments (weekly in sittings) giving information on disallowance actions in the Senate and matters raised by the Regulations and Ordinances Committee (see Chapter 15, Delegated Legislation and Disallowance)

Questions on Notice Summary, tabled at the beginning of the autumn and spring sitting periods; lists questions which are asked (by number only), the dates they were asked and answered and relevant references in Hansard

Scrutiny of Bills Alert Digest, tabled each sitting week; summarises the bills considered by the Scrutiny of Bills Committee that week and draws attention to provisions which the committee considers may contravene the principles contained in its terms of reference; the committee follows up in its reports on matters raised in the digests.

Internet publication

In addition to the publication of Senate and committee proceedings in sound and visual images on the internet,²⁸ all of the documents mentioned in this chapter are available on the internet at http://www.aph.gov.au/About_Parliament/Senate.

28 See above, under Broadcasting of proceedings.

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No. 24—21 March 2011

1 MEETING OF SENATE

The Senate met at 10 am. The President (Senator the Honourable John Hogg) took the chair, read prayers and made an acknowledgement of country.

2 ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE—LEAVE TO MEET DURING SITTING

Senator McEwen, by leave and at the request of the Chair of the Environment and Communications Legislation Committee (Senator Cameron), moved—That the Environment and Communications Legislation Committee be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate today.

Question put and passed.

3 COMMITTEES—LEAVE TO MEET DURING SITTING

Senator Parry, by leave and at the request of the respective committees, moved—That—

- (a) the Standing Committee of Senators' Interests be authorised to meet during the sitting of the Senate today, from 10 am, for a private briefing; and
- (b) the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity be authorised to hold a public meeting during the sitting of the Senate today, from 12.30 pm.

Question put and passed.

**4 NATIONAL BROADBAND NETWORK COMPANIES BILL 2010
TELECOMMUNICATIONS LEGISLATION AMENDMENT (NATIONAL BROADBAND
NETWORK MEASURES—ACCESS ARRANGEMENTS) BILL 2011**

Order of the day read for the adjourned debate on the motion of the Parliamentary Secretary for School Education and Workplace Relations (Senator Collins)—That these bills be now read a second time.

Debate resumed.

On the motion of the Minister for Sport (Senator Arbib) the debate was adjourned and the resumption of the debate made an order of the day for a later hour.

5 ORDER OF BUSINESS—REARRANGEMENT

The Minister for Sport (Senator Arbib) moved—That intervening business be postponed till after consideration of the following government business orders of the day:

- No. 4 Defence Legislation Amendment (Security of Defence Premises) Bill 2010.
- No. 5 Australian Civilian Corps Bill 2010.
- No. 6 Screen Australia (Transfer of Assets) Bill 2010.

Question put and passed.

**6 DEFENCE LEGISLATION AMENDMENT (SECURITY OF DEFENCE PREMISES)
BILL 2010**

Order of the day read for the adjourned debate on the motion of the Parliamentary Secretary for Sustainability and Urban Water (Senator Farrell)—That this bill be now read a second time.

Debate resumed.

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No. 22—3 March 2011

GENERAL BUSINESS—CONSIDERATION OF PRIVATE SENATORS' BILLS

Orders of the Day

- 31 **Protecting Children from Junk Food Advertising (Broadcasting Amendment) Bill 2010—(Senate bill)**—(*Leader of the Australian Greens, Senator Bob Brown*)
Second reading—Adjourned debate (*Senator Bob Brown, in continuation, 30 September 2010*).
- 22 **Environment Protection (Beverage Container Deposit and Recovery Scheme) Bill 2010—(Senate bill)**—(*Senator Ludlam*)
Second reading—Adjourned debate (*Senator Ludlam, in continuation, 30 September 2010*).

BUSINESS OF THE SENATE

Notices of Motion

Notice given 2 March 2011

- *1 **Chairman of the Standing Committee for the Scrutiny of Bills (Senator Coonan):** To move—That—
- (1) The following matter be referred to the Standing Committee for the Scrutiny of Bills for inquiry and report by the last sitting day in June 2011: The future direction and role of the Standing Committee for the Scrutiny of Bills, with particular reference to whether its powers, processes and terms of reference remain appropriate.
 - (2) In undertaking this inquiry, the committee should have regard to the role, powers and practices of similar committees in other jurisdictions.
 - (3) The committee be authorised to hold public hearings in relation to this inquiry and to move from place to place.
 - (4) The committee be authorised to access the records and papers of the 2010 inquiry into its future role and direction.
- *2 **Senator Fisher:** To move—That the following matter be referred to the Environment and Communications References Committee for inquiry and report by 2 November 2011:
The capacity of communication networks and emergency warning systems to deal with emergencies and natural disasters, with particular reference to:
- (a) the effectiveness of communication networks, including radio, telephone, Internet and other alert systems (in particular drawing on the spate of emergencies and natural disasters of the 2010/2011 Australian summer):
 - (i) in warning of the imminent threat of an impending emergency,
 - (ii) to function in a coordinated manner during an emergency, and
 - (iii) to assist in recovery after an emergency;

