

Preface to the thirteenth edition

Odgers' Australian Senate Practice is the authoritative account of the practices and procedures of the Australian Senate and its place in the framework of the Australian Constitution. First produced as *Australian Senate Practice* in 1953 by James Rowland Odgers, Clerk of the Senate 1965-79, it went through five editions in Odgers' lifetime with a sixth edition produced posthumously in 1991 but based on additional material prepared by its original author. By that stage, the work had grown considerably and contained a great deal of historical information.

The seventh edition was a complete revision, authored by Harry Evans, Clerk of the Senate 1988-2009. It was written to a revised set of standing orders adopted in 1989 and after the passage of the *Parliamentary Privileges Act 1987* and the consequent adoption by the Senate of the Privilege Resolutions in 1988. It reflected a Senate which had matured significantly after the adoption of a system of standing committees in 1970 and which now had in place a system for referring a significant proportion of bills to committees, as well as a standing committee devoted to the scrutiny of bills against principles similar to those adopted by the much older Regulations and Ordinances Committee. It was a Senate in which procedures designed to hold the government to account had evolved considerably since 1974 when senior public servants had been called to the Bar of the Senate to answer questions about the Overseas Loans Affair, but which held to the principles enunciated during those difficult times about its power to order documents and its right to determine claims of executive privilege. It was also a Senate which had inquired into the conduct of a judge in an attempt to establish whether misbehaviour had occurred for the purpose of a possible process to remove the judge under section 72 of the Constitution.

There was thus much new material to address. The seventh edition made reference to the voluminous historical material in the sixth edition but did not attempt to replicate it. Odgers' contribution to the work was recognised by a change of title to *Odgers' Australian Senate Practice*. Harry Evans edited five more editions before his retirement in 2009, producing supplements to each edition at six monthly intervals to ensure that it remained up to date until the next edition. Although it had been published online since the seventh edition, it was – and remains – primarily a reference book for use by senators and staff, including in the Senate chamber where it is regularly cited.

This thirteenth edition remains very much the work of Harry Evans and therefore continues to bear his name. There has been some restructuring of chapters and some omission of historical material, particularly Chapter 13 on Financial Legislation, and a complete reformatting to corral references in footnotes, among other things. Essentially, however, it is the twelfth edition updated to take account of developments since 2008. It is not yet time for a wholesale revision of the scale undertaken in the seventh edition in 1995. That task will be the work of a future Clerk of the Senate.

Since the twelfth edition was published in 2008, another procedural reference work has been

produced, the *Annotated Standing Orders of the Australian Senate*, published in 2009. That work traces the history and evolution of the Senate's current standing orders. Some cross-references to that work are included in this edition but, generally, any reader who wants to know more about a particular standing order and its rationale should consult the annotated standing orders which are also published online.

The twelfth edition appeared following a short period of government control of the Senate when the Howard Coalition Government held 39 seats (an absolute majority). During that time the legislative and general purpose standing committees returned to a system of single committees in each subject area, with government chairs, as had existed before 1994. Since the twelfth edition was published, committees have reverted to the paired system of legislation committees under government chairs and references committees under non-government chairs. The Chairs' Committee, established under standing order 25(10), has found its feet as a forum for considering issues of procedural and administrative importance affecting committees.

There have been other important changes. A protocol was developed for witnesses seeking to be excused from answering particular questions on grounds of public interest immunity and was reflected in a resolution of the Senate of 13 May 2009, reaffirming the Senate's right to determine such claims. The resolution forms an integral part of chairs' opening statements at estimates hearings of legislation committees. On the other hand, the idea of third party arbitration for disputed claims of public interest immunity received some setbacks when a committee recommended against adopting the practices used in some states and also used successfully by the Senate in the past. Moreover, the mechanism for arbitration proposed in various agreements on parliamentary reform, struck in the course of the formation of a minority government following the 2010 election, encountered resistance and proved unworkable for the time being.

An attempt to make it an offence to give information to a parliamentary committee under certain circumstances failed when the Privileges Committee pointed out that it was a contradiction of the law of parliamentary privilege which could be changed only by an explicit statutory declaration under section 49 of the Constitution. In other matters of institutional importance, the Senate agreed to a consolidated resolution setting out its position on the question of ordinary annual services of the government for the purposes of section 53 of the Constitution, as recommended by the Appropriations and Staffing Committee. In accordance with a recommendation of that committee, the President continued to draw the finance minister's attention to funding for new policies, not previously authorised by special legislation, in the bill for the ordinary annual services of the government, contrary to the agreement between the Senate and the government, first struck in 1965.

Procedures for questions without notice continued to be modified. Questions to committee chairs and individual senators in relation to matters on the Notice Paper were abolished while the right to

ask questions of the President was formalised. Shorter time limits for questions and answers were tried, together with the allocation of two supplementary questions to each primary questioner, and a requirement for answers to be directly relevant, the meaning of which continued to be tested through points of order. The shorter time limits and associated measures continue to operate as temporary orders and have not been permanently adopted. They arose from an initiative of a former President to reform question time but represent only a partial implementation of a wider vision.

Greater opportunities for the consideration of private senators' bills were also implemented on a trial basis, as a consequence of the agreements of parliamentary reform. Greater opportunities for such business in both Houses led to an increase in the number of private members' and senators' bills passed into law, modifying in small part the executive stranglehold on the initiation of successful legislation which has been a characteristic of the Australian Parliament since Federation.

An Indigenous 'welcome to country' ceremony was formalised as part of the proceedings for an opening of Parliament while an acknowledgement of country was incorporated into each day's proceedings after prayers.

The proportion of bills referred to committees rose to around 65 per cent, despite the more regular referral of bills by the House of Representatives to its committees. Although dual referral remained reasonably rare, committees of both Houses developed cooperative arrangements to ensure that duplication was minimised while the right of each Houses to inform itself about the details of legislation before it was respected. Senate committee inquiries into bills continued to generate numerous amendments, often accepted and moved by the government.

While committees continued to invite the vast majority of witnesses to participate in their inquiries, a few witnesses were ordered to appear either by the committee or the Senate. One unusual order of continuing effect required the head of a particular agency to appear at every estimates hearing when the estimates for that agency were considered. Several attempts to relax the order failed.

With the Presiding Officers accepting a recommendation from the Joint Committee of Publications for online publication of the Parliamentary Papers Series, the parliament moved a step further into the electronic age. In one case an order for production of certain forest maps could only be responded to with digital images because, at the resolution required by the order, the maps would have been impossible to print in hard copy in any meaningful form. Although the overwhelming majority of documents continue to be tabled in hard copy, the challenge of making parliamentary business information more accessible in electronic form is an immediate one. It is therefore appropriate that this thirteenth edition of the principal reference work about the Australian Senate be published as an e-book as well as online and in hard copy.

As usual, many Senate officers have contributed to the compilation and production of this work.

I thank all of them but, in particular, Harry Evans (for his continuing interest), Kay Walsh (for indexing), Glenn Ryall (for research and discriminating readership) and Cassandra Stephenson (for production). Responsibility for any errors is mine.

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