

Clerk's Office

Outputs

Provision of sound and timely advice on proceedings of the Senate and its committees and provision of leadership and strategic direction for the department.

Provision of secretariat and advisory support to the Procedure Committee, the Committee of Privileges and the Committee of Senators' Interests.

Provision of procedural information and related services to senators and the Senate department.

	Performance indicators	Performance results
Quality	<p>The degree of satisfaction of the President, Deputy President, committee members and senators, as expressed through formal and informal feedback mechanisms, with the quality and timeliness of advice and support and the achievement of key tasks.</p> <p>Advice, documentation, publications and draft reports are accurate and of a high standard.</p>	<p>Comments by senators in the Senate or in committees indicated very high levels of satisfaction with advice and other services provided by the Clerk's Office.</p> <p>All advice, documents, publications and draft reports remained of a high standard and none was shown to be inaccurate.</p>
Timeliness	<p>Meetings held, documentation provided and reports produced within timeframes set by the Senate or the committee, as relevant.</p> <p><i>Odgers' Australian Senate Practice</i> updated each six months; new printed edition produced regularly.</p> <p><i>Procedural Information Bulletin</i> produced two days after end of sitting fortnights.</p> <p>Other procedural resources updated and augmented as required.</p>	<p>All the indicators relating to timeliness were met to the satisfaction of senators.</p> <p>Two supplements to the 12th edition of <i>Odgers' Australian Senate Practice</i> were produced. They were tabled in the Senate on 11 August 2009 and 2 February 2010.</p> <p>The <i>Procedural Information Bulletin</i> was produced within the specified timeframe following all sitting periods and estimates hearings.</p> <p>The <i>Annotated Standing Orders of the Australian Senate</i>, a new reference work, was published in August 2009. The online version with additional illustrative material was published in April 2010.</p>
Quantity	<p>As required, on request, or proactively, to facilitate proceedings.</p>	<p>The demand for written advice was comparable with 2008–09.</p> <p>Sufficient printed copies of all reports and documents were available immediately on publication or tabling, and all publications were made available online as soon as possible.</p>

Overview

The Clerk's Office consists of the Clerk, the Deputy Clerk and their executive assistants.

The Clerk is the administrative head of the Department of the Senate and, in accordance with the *Parliamentary Service Act 1999*, is responsible, under the President of the Senate, for managing the department. The Clerk is also the principal adviser to the President and senators on proceedings in the Senate, parliamentary privilege, committee proceedings and their outcomes in the chamber, and other parliamentary matters. The Deputy Clerk supports the Clerk in these roles and chairs the department's Audit and Evaluation Committee.

The former Clerk of the Senate, Harry Evans, retired on 4 December 2009 (see the 'Clerk's review') and the current Clerk, Rosemary Laing, was appointed to the position from 5 December 2009. The Deputy Clerk's position is currently filled on an acting basis until the end of the 42nd Parliament by Cleaver Elliott, pending the outcome of a review of departmental structures and operations that commenced in February 2010.

The full-time equivalent staffing level for the Clerk's office in 2009–10 was 4, consistent with the long-term average.

The cost of the office for 2009–10 was \$1.1 million (\$1.2 million in 2008–09).

Procedural advice

The primary function of the Clerk's Office is to provide procedural and constitutional advice. The office gives oral and written advice but records only written advice because of the difficulty of quantifying oral advice. The office may provide the advice proactively or on request.

Figure 3 shows the number and kinds of written advices provided during 2009–10, and each kind as a proportion of the total. The total number represents a continuation of last year's trend, which saw a strong return to normal levels, consistent with the fluctuations in demand that occur during an electoral cycle.

Figure 3 Types of written advices provided by the Clerk, 2009–10

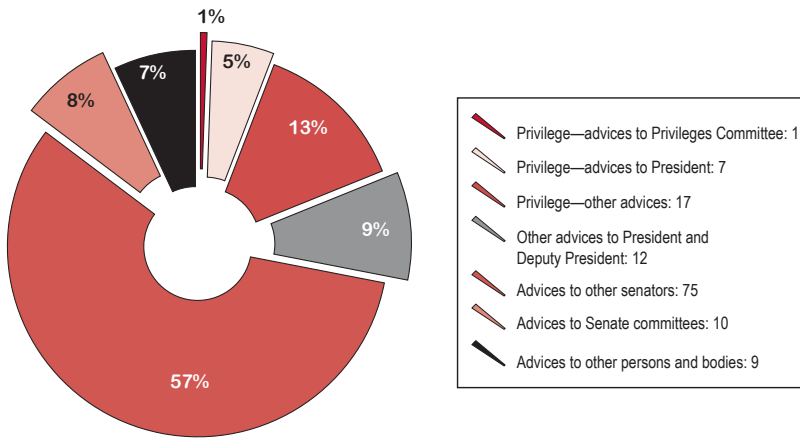
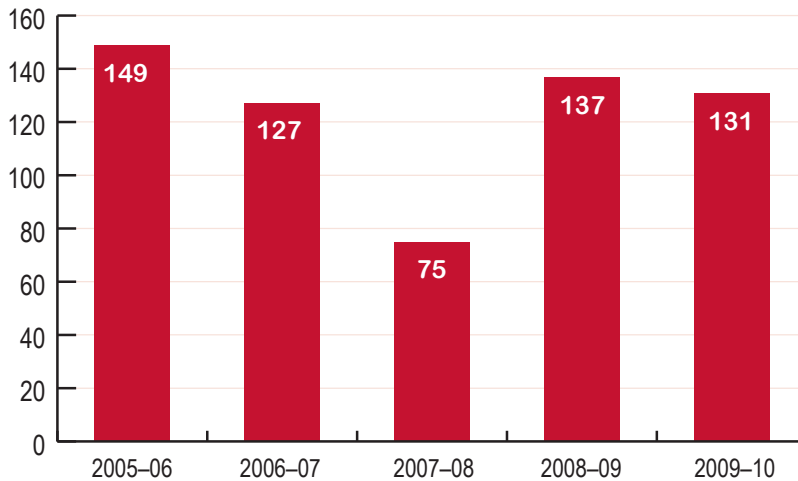


Figure 4 shows the number of written advices that the Clerk’s Office has provided each year over the past five years. The figures for the past two years also reflect the return of the Senate to a situation where no party has a majority.

Figure 4 Number of advices provided by the Clerk’s Office, 2005–06 to 2009–10



While the figures for most categories of advice were comparable with last year’s figures, there was an increase in the number of advices relating to issues of parliamentary privilege. Some of these were related to the work of the Committee of Privileges while others concerned issues that arose in the Senate or other committees, or were in response to queries from other jurisdictions. One matter concerning individual senators was the issuing of subpoenas for senators to appear as witnesses in court on a sitting day. Following advice, the subpoenas were not issued and, in the end, the

senators were not required to give evidence. The treatment of witnesses by third parties remains a matter of perennial concern and was the subject of references to the Committee of Privileges.

Advice also covered numerous other subjects. The application of section 57 of the Constitution to the package of carbon pollution reduction scheme bills prompted a significant number of advices, as did the disallowance of certain items in the General Medical Services Table made under the *Health Insurance Act 1973* and steps taken to address the resulting gap in Medicare coverage for cataract surgery. Another much revisited subject was the application of the Senate's order of 13 May 2009 on raising and dealing with claims of public interest immunity, and the power of the Senate to require witnesses to appear before its committees. Most witnesses appear by invitation but on rare occasions, for particular reasons, witnesses are either summoned by committees or ordered by the Senate to attend committee hearings. On two occasions during the year, the Senate's powers were applied to require the appearance of agency heads at estimates hearings.

The Clerk made submissions to the following inquiries:

- Senate Committee of Privileges, provisions of the Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009
- Senate Standing Committee for the Scrutiny of Bills, the future direction and role of the committee
- Queensland Parliament, Committee System Review Committee, review of the committee system of the Queensland Parliament
- Joint Committee on Publications, electronic distribution of the Parliamentary Papers Series.

Departmental officers contributed substantially to the last three listed submissions.

Committees

The office is responsible for the administration of three Senate standing committees.

Procedure Committee

The Clerk of the Senate served as secretary to the Procedure Committee, which responds to references from the Senate or the President by evaluating, and recommending improvements to, Senate procedure.

The committee met four times in 2009–10, in relation to numerous matters, and presented four reports. The order of the Senate of 13 May 2009 in relation to claims of public interest immunity required the committee to monitor and review the operation of the order. The committee reported to the Senate on this matter in its third and fourth reports of 2009. It also reported further on the modified rules for question time, adopted in November 2008, and recommended that the trial continue with a further modification for the remainder of the Parliament and the first two sitting weeks of the next parliament. This recommendation was adopted by the Senate on 25 November 2009. The committee considered a proposed amendment to the standing order on visitors, designed to accommodate the occasional need for senators to care for infants in the chamber, but agreed that the amendment was not desirable. The committee also considered possible procedures to deal with private senators' bills and bills relying substantially on delegated legislation for their effect. Finally, the committee sought feedback from senators on the inclusion of an Indigenous 'Welcome to Country' ceremony to precede openings of parliament (dealt with in the first and second reports of 2010). Although views were divided, the Senate adopted a resolution of continuing effect on 23 June 2010 supporting the inclusion of such a ceremony before openings of parliament.

Committee of Privileges

The Deputy Clerk served as secretary to the Committee of Privileges. The committee protects the integrity of Senate and committee proceedings by considering matters possibly amounting to contempt of the Senate. Those matters, which are a result of concerns raised by other committees or individual senators, are referred to the committee by the Senate. The Committee of Privileges also administers the right-of-reply mechanism for people seeking to respond to adverse comment made about them in the Senate.

The committee had a busy year, meeting 20 times in 2009–10 (four times in 2008–09) and presenting nine reports (an increase from three in 2008–09).

The committee considered three contempt matters, resulting in two reports. Two of these matters were complex and difficult, requiring 14 meetings to consider them. Six applications under Privilege Resolution 5 were received and the committee agreed to recommend the incorporation of a right of reply in all cases.

The committee also conducted an inquiry into the provisions of a bill which raised important matters of principle relating to parliamentary privilege. In the course of this inquiry, the committee received 11 submissions and held one public hearing, its first for some years. The committee presented its report on this matter out of sitting to provide the Senate with sufficient time to consider the issues before dealing with the bill. Although the bill had not been dealt with by the end of the year, the Government had circulated amendments to give effect to the committee's recommendations.

Committee of Senators' Interests

The Deputy Clerk also served as secretary to the Committee of Senators' Interests, and helped senators to fulfil the requirements of Senate resolutions relating to declarations of pecuniary interests and gifts.

In 2009–10, the committee met three times (twice in 2008–09), and presented its annual report as required by its terms of reference. The committee also presented a report proposing that statements of senators' interests be published on the internet from the commencement of the 43rd Parliament. The secretariat and the department's information technology staff began preparations for this, with the outcome to be reported in next year's annual report.

The secretariat continued to provide access to the register of senators' interests and to make copies of statements available on request. Sixty requests for access were facilitated during the year.

As required under the relevant resolution of the Senate, senators continued to register alterations to their statements of interests. Volumes of alterations and new statements were prepared by the secretariat and tabled on 25 November 2009 and 23 June 2010. Departmental Senior Executive Service (SES) officers' statements of interests were tabled on the same dates.

A declaration of a gift intended for the Parliament was tabled on 23 June 2010.

Procedural information

Two six-monthly supplements to *Odgers' Australian Senate Practice* were produced by the Clerk to record procedural developments up to 30 June 2009 and 31 December 2009. These were tabled in the Senate on 11 August 2009 and 2 February 2010. The 2010 supplement was produced in a slightly different format to assist readers in identifying the

new material. The supplements covered changes to the structure of the committee system, amendments to the standing orders on questions without notice, the trial of new procedures for question time, lack of progress (subsequently overcome) in the resolution of the dispute over ordinary annual services of the Government, and the new order on handling claims of public interest immunity.

The Clerk produced issues of the *Procedural Information Bulletin* after each sitting period or period of estimates hearings. These bulletins covered all major procedural developments and issues of procedural interest arising in the proceedings of the Senate or during estimates hearings.

As foreshadowed in last year's report, the *Annotated Standing Orders of the Australian Senate* was published in August 2009. It was launched by the President of the Senate at a function held on the 106th anniversary of the adoption of the Senate's Standing Orders on 19 August 1903. Former Presidents Ferguson, Reid, Beahan and Sibraa were also in attendance. While the book contains an institutional history of Senate procedures, it also traces the development and rationale of each standing order now in use, thus providing essential background and context to inform future changes.

Immediately after publication of the book, work began on the online version and on the identification of additional illustrations to accompany the online entries. This work was completed and the full online version was published in April 2010.

Information about Senate officers' presentations and papers appears in appendix 4.

Factors, events and trends influencing performance

Demand for written advice was on a par with demand in 2008–09, which reflected a return of the Senate to a situation where no party enjoyed a majority of seats. The number of sitting days was well under the long-term average but, with committees meeting on most other days, there was a constant demand for the advisory services of the Clerk's Office.

Most of these are now provided by electronic means and are therefore available very quickly to the senators or others requesting them. As in previous years, advices were frequently published by their recipients and therefore subjected to public scrutiny. None was shown to be deficient or inaccurate.

The committees supported by the office were also more active during the year than earlier in the electoral cycle. In particular, the Privileges Committee dealt with three contempt matters, two of them arising from hearings of the Economics Legislation Committee in June 2009 in relation to the so-called ‘Utegate affair’. In March 2010, the committee received its first reference of a government bill (and only its second bill inquiry) when the Senate referred provisions of the Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009 for investigation of possible conflict with the *Parliamentary Privileges Act 1987*. The Clerk provided a submission to this inquiry.

Evaluation

While the principal medium for the formal evaluation of services provided by the Clerk’s Office, the biennial survey of senators, was not conducted in 2009–10, feedback was received from senators making comments in the Senate or relying in committees on advice provided by the office. In particular, senators paid extensive tribute to the retiring Clerk on 19 November 2009 and also welcomed the announcement on 29 October 2009 of his successor.

The immediate testing of advice provided by the office during estimates hearings and other proceedings of the Senate also continued, with senators seeking and relying on such advice on numerous occasions during 2009–10.

Performance outlook

Once the election is called during the next reporting period, the office is likely to experience a downturn in demand for written advices that is characteristic of this point in the electoral cycle. It is also expected that the committees supported by the office will be less active during that time. Consequently, opportunities will be taken to complete, evaluate and implement the review of departmental structures and operations and to prepare for a new parliament. Work will commence on preparing the next edition of *Odgers’ Australian Senate Practice* (the 13th) and on reviewing the range and effectiveness of procedural resources for senators and staff.