

The Senate

Procedure Committee

Ministerial statements

Publications Committee

Third report of 2015

November 2015

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Procedure Committee

Third report of 2015

The committee reports to the Senate on the following matters discussed at its meeting on 15 October 2015.

Ministerial statements

At the request of the Leader of the Opposition in the Senate (Senator the Hon Penny Wong), the President referred to the committee, pursuant to standing order 17(3), a process for the presentation and debate of ministerial statements. The committee had previously considered options for presentation and debate of ministerial statements in the context of its long-running inquiry into the routine of business. It tasked the Clerk with preparing a further options paper which is published at **Attachment 1**.

The committee considered the paper and endorsed the following suggestions:

1. Ministerial statements continue to be included as a standard item on the Red for those occasions when there is a desire to debate a significant statement.
2. The practice of presenting routine ministerial statements with documents handed in at the commencement of sittings continue, consistent with recent attempts to streamline presentation and consideration of documents.
3. Governments be encouraged to present ministerial statements to both Houses unless the statement concerns an issue of relevance to one House only.
4. Governments be encouraged to provide information about forthcoming ministerial statements in time for consideration by the Whips meeting (for consultation on whether a statement should be presented separately at the designated place on the Red).
5. Governments be encouraged to notify Opposition spokespeople and cross-benchers in advance of particular ministerial statements.
6. Create a right for senators to move a motion to take note of a ministerial statement without notice.

In relation to suggestions 1 to 5, the committee commends these practices to all senators.

In relation to suggestion 6, the committee **recommends** that a temporary order providing a right for senators to move, without notice, a motion to take note of a ministerial statement presented other than at the commencement of sittings (pursuant to standing order 61) should be tested for the remainder of the current Parliament. The terms of the proposed temporary order are at **Attachment 2**.

Recommendation 1

The committee recommends that the Senate adopt the temporary order at Attachment 2, with immediate effect, until the end of the current Parliament.

The committee also discussed whether the oral presentation of a ministerial statement should continue to require leave, but agreed to defer consideration of this matter until it had assessed the efficacy of the recommended temporary order.

Publications Committee

The committee received correspondence from the Joint Committee of Publications seeking its view on a proposed change to standing order 22 establishing the Senate Publications Committee. The correspondence is reproduced at **Attachment 3**. The proposed change brings the standing order in line with contemporary practices for publication of documents in both printed and digital formats, and with the terms of reference of the Publications Committee of the House of Representatives with which it is empowered to meet jointly for the purpose of undertaking certain inquiries.

The committee considers that the proposed change to the standing order is appropriate, and encourages the Joint Publications Committee in its efforts to implement an electronic Parliamentary Papers Series.

Accordingly, the committee recommends that standing order 22(3)(a) be amended to omit reference to “printing”, so that paragraph (3) reads as follows:

- (3) When sitting with a similar committee of the House of Representatives, the committee shall also have power:
 - (a) to inquire into and report on the publication and distribution of parliamentary and government publications and on such related matters as are referred to it by the relevant minister; and
 - (b) to send for persons and documents.

Recommendation 2

The committee recommends that standing order 22(3)(a) be amended as follows:

Omit “printing.”.

Senator Gavin Marshall

Chair

Ministerial statements – further options paper

Background

Ministerial statements are the traditional way of announcing significant government policy developments, or of communicating matters of ministerial responsibility to the Houses. The system of ministerial representation that operates in the Commonwealth Parliament ensures that there is an appropriate means for such statements to be made and/or tabled in both Houses.¹

Debates on ministerial statements can be among the more significant policy debates that take place in a House.

Traditionally, ministerial statements are made by leave, consistent with the principle that a House determines its own business. Debate on any such statement is also by leave, consistent with the same principle. As noted in the earlier discussion paper, the executive government has no unfettered right to impose its business on the Senate except in accordance with the routine of business, or a specific decision of the Senate or the granting of leave.

However, a distinction is drawn between ministerial statements made orally and those which are tabled as documents. Because of their responsibilities in relation to public affairs, the standing orders of many jurisdictions (including the Senate) recognise a right for ministers to table documents.

Practice in other jurisdictions

In some Houses, the routine of business includes a place for ministerial statements to be made, although this is no guarantee that statements will be made at that time.

– House of Representatives

The routine of business is established by a chart attached to standing order 34 which shows a place for ministerial statements to be made after question time and the MPI. Such statements are made *by leave*. A new standing order agreed to in March 2015 provides as follows:

63A Ministerial statements

When the House has granted a Minister leave to make a ministerial statement, the House shall be deemed to have granted leave for the Leader of the

¹ A principle that is not always observed. See Attachment 1 for a survey of 1-7-2014 to present and Attachment 2 for 2012.

Opposition, or Member representing, to speak in response to the statement for an equal amount of time.

– ACT Legislative Assembly

Recently amended practice in the ACT legislative Assembly is for ministerial statements to be presented without leave at one of two opportunities specified in the routine of business (morning and afternoon), but a statement may be made without leave only if the Speaker has been notified two hours in advance and copies have been circulated to all members. After the statement is made, the minister tables a copy and moves a motion to take note of the paper. Debate occurs in accordance with the normal rules of debate (15 minutes for the first government, opposition and cross-bench member, 10 minutes for all other members).

The relevant parts of the standing order are as follows:

74. The Assembly shall proceed each day with its ordinary business in the following routine:

Prayer or reflection
Presentation of petitions
Ministerial statements
Notices and orders of the day
Questions without notice
Presentation of papers
Ministerial statements
Matter of public importance
Notices and orders of the day:

...

provided further that, in relation to ministerial statements, copies shall be provided to the Speaker for circulation to all Members two hours prior to the time at which the statement is proposed to be made; and that Ministers shall table a copy of the statement and move that the paper be noted.

(Adopted 27 November 2012. Amended 4 June 2015)

– UK House of Commons

Complex rules and conventions govern the presentation and debate of ministerial statements in the UK House of Commons, key features of which are:

- ministerial statements are made after questions, but preferably not on Opposition days
- prior notice must be given to the Speaker but neither his/her permission nor leave of the House is required
- notice is given where practicable by informal means (notice boards) or by notice of intention to make an oral statement included in the Order Paper

-
- copies are made available to members and the press as soon as the minister sits down (Speaker's ruling)
 - advance copies are provided to the Opposition spokespeople as a matter of courtesy
 - questions arising from the statement are allowed by the Speaker and ministerial replies given
 - alternatively, as a result of the adoption of suggestions by the Modernisation Committee, around an hour is set aside for such statements on Tuesday-Thursday with set times for contributors (no more than 10 minutes for the minister making the statement, followed by 5 minutes for the official opposition reply and 3 minutes for the second largest opposition party spokesperson).

Much remains in the discretion of the Speaker, including whether ministerial statements may be made at other times of the day.

Current Senate Practice

Ministerial statements have not been formally recognised in the standing orders as an element of the routine of business at any time in the Senate's history. However, they have been – and continue to be – informally recognised on the Order of Business or Senate "Red" where they appear every afternoon before business proper resumes. Before recent changes were adopted, ministerial statements (by leave) appeared in the same bracket as tabling of documents by the President, ministers, committees and the Clerk. Under the new arrangements, all documents are handed in at the beginning of the day on Monday-Wednesday while committee reports also have a dedicated slot on Tuesday-Thursday.

Note that under current arrangements, there is nothing to prevent ministerial statements from being tabled with the handed-in documents and some have been. This means that senators have a right to speak to them later in the day. If, on the other hand, ministerial statements are presented in their traditional slot, any response – whether it is a statement or a motion to take note – can only be done by leave.

In considering options for a clear and definite procedure for the presentation and debate of ministerial statements, a threshold issue is whether all ministerial statements are the same. Some may be considered routine and may be dealt with appropriately under the new procedures for presentation and debate of documents. Those statements considered by senators to be of greater significance could be dealt with outside that framework, either by the traditional method or in accordance with a specific rule.

The key elements in the different jurisdictions examined are as follows:

- notice given to the Presiding Officer, whether formally or informally

- an assumption that the opportunity to respond is a necessary part of the process. The key difference is whether ministers require leave to make statements, a difference that is largely determined by differences in culture and which is of little practical impact because of the right of ministers to table documents if denied leave to make an oral statement.

On the issue of notice, informal practices that have prevailed in the past include the release of information about forthcoming statements so that they may be included on the Red, and the provision of advance notice (and possibly advance copies) to opposition spokespeople and cross-benchers. On the other hand, this information is sometimes embargoed and there is a related caution about preserving a minister's opportunity to present a statement to his or her House without being pre-empted by its presentation in the other, meaning that statements are often presented to the Houses on different days. A bicameral system means that the simplicity of the ACT Legislative Assembly's formal requirement for prior circulation of ministerial statements to all members could not be effectively codified for the Commonwealth Houses, each of which has complete autonomy to control its own business.

Suggestions

1. Ministerial statements continue to be included as an item on the Red for those occasions when there is a desire to debate a significant statement.
2. The practice of presenting routine ministerial statements with documents handed in at the commencement of sittings continue, consistent with recent attempts to streamline presentation and consideration of documents.
3. Governments be encouraged to present ministerial statements to both Houses unless the statement concerns an issue of relevance to one House only
4. Governments be encouraged to provide information about forthcoming ministerial statements in time for consideration by the Whips meeting (for consultation on whether a statement should be presented separately at the designated place on the Red).
5. Governments be encouraged to notify Opposition spokespeople and cross-benchers in advance of particular ministerial statements.
6. Create a right for senators to move a motion to take note of a ministerial statement without notice.

In relation to suggestion (6), if a minister is given leave to make an oral statement, or if a minister tables a statement at the designated place on the Red, an amendment to standing order 169 could allow a motion to be moved without notice to take note of

the statement (including by the minister him- or herself). Such an amendment could take the following form:

- (3) If a ministerial statement is presented to or tabled in the Senate, it shall be in order for a senator to move a motion without notice to take note of the statement. On any such motion, a senator may speak for not more than 10 minutes and paragraph (2) applies to the total time limit for individual or successive motions.

[paragraph (2) would have the effect of placing a 30 minute time limit on the debate on one statement and a 60 minute time limit on debate on two or more statements presented consecutively]

Clerk's Office

October 2015

Attachment A

Ministerial statements presented to Parliament since 1 July 2014

Both houses	Tabled Senate	Tabled HoR
National Security	22.9.14	22.9.14
G20-OECD tax and transparency	22.9.14	4.9.14
Investment	24.9.14	23.9.14
Malaysia Airlines Flight MH17	1.10.14	30.9.14
Spring repeal day	28.10.14	22.10.14
Infrastructure	30.10.14	30.10.14
First Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (Nay Pyi Taw, 26 August 2014)	25.11.14	24.11.14
The Australian Government's response to the Aviation Safety Regulation Review report	3.12.14	3.12.14
Our achievements in schools and cross-border education	9.2.15	4.12.14
Closing the Gap	11.2.15	11.2.15
Capability through diversity	2.3.15	2.3.15
A compact between the generations: The 2015 intergenerational report	5.3.15	5.3.15
Murray-Darling Basin Plan	26.3.15	26.3.15
Partnership for regional growth 2015-16 (part of the Budget package)	12.5.15	12.5.15
Centenary of Anzac and Anzac Day 2015	13.5.15	14.5.15
China-Australia Free Trade Agreement	17.6.15	17.6.15
Science and innovation: Building Australia's industries of the future	19.8.15	17.8.15
2015 review of the Export Market Development Grants (EMDG) scheme	19.8.15	20.8.15
Senate ONLY	Tabled Senate	
Australian National Action Plan on Women, Peace and Security 2012-18	15.7.14	
Launch of the Second Action Plan of the National Plan to Reduce Violence against Women and their Children 2010 to 2022	16.7.14	
Iraq	1.9.14	
Military service	28.10.14	
Afghanistan and Iraq	3.12.14	
59th session of the United Nations Commission on the Status of Women	14.5.15	
Centenary of Anzac and Anzac Day 2015 Revised	10.8.15	
House of Representatives ONLY		Tabled HoR
Japan-Australia Economic Partnership Agreement		15.7.14
Australia-India Nuclear Cooperation Agreement		28.10.14
Progress on road safety		2.12.14
Delivering prosperity and growth for Australia		4.12.14
Iraq and Afghanistan and operations in the Middle East		26.2.15
Autumn repeal day 2015		18.3.15
Mental health in the Australian Defence Force		24.3.15
Offer of repatriation—Terendak Cemetery		25.5.15

Attachment B

Ministerial statements presented to Parliament in 2012

Both houses	Tabled Senate	Tabled HoR
Afghanistan, dated 24 November 2011	7.2.12	(21.11.11)
Murray-Darling Basin reform	7.2.12	(21.11.11)
The Government's response to people trafficking	7.2.12	(21.11.11)
The implementation of an effective aid program for Australia	7.2.12	(23.11.11)
Recent events in Papua New Guinea	8.2.12	7.2.12
The situation in Syria	8.2.12	7.2.12
Livestock trade to the Middle East	9.2.12	13.2.12
Defence authority security vetting	9.2.12	8.2.12
Afghanistan, dated 9 February 2012	27.2.12	9.2.12
HMAS Success Commission of Inquiry	27.2.12	9.2.12
The global economy	27.2.12	9.2.12
Closing the gap	27.2.12	15.2.12
The situation in Syria and Iran	27.2.12	15.2.12
Workplace deaths	19.3.12	14.3.12
International Women's Day 2012	19.3.12	14.3.12
Helping the world's poor (part of the Budget package)	9.5.12	8.5.12
Continuing our efforts to close the gap (part of the Budget package)	9.5.12	8.5.12
Securing a clean energy future (part of the Budget package)	9.5.12	8.5.12
Stronger regions, stronger nation (part of the Budget package)	9.5.12	8.5.12
Afghanistan, dated 10 May 2012	18.6.12	10.5.12
Afghanistan, dated 24 May 2012	18.6.12	24.5.12
Government response to the review of military compensation arrangements	18.6.12	23.5.12
20th Anniversary of the Mabo native title decision	18.6.12	31.5.12
The global economy	19.6.12	18.6.12
Homelessness	21.6.12	20.6.12
Retirement of the Inspector of Transport Security and tabling of the offshore oil and gas resources sector security inquiry report	26.6.12	25.6.12
National Road Safety Strategy	28.6.12	27.6.12
Asbestos management review	20.8.12	16.8.12
Afghanistan, dated 16 August 2012	20.8.12	16.8.12
Government affordability assistance brings record child care growth	12.9.12	11.9.12
Progress towards a National Disability Insurance Scheme	12.9.12	11.9.12
Future of workers' penalty rates and public holidays	19.9.12	18.9.12
Investment in nuclear medicine and treatment	19.9.12	20.9.12
A viable future for Australia's pulp and paper industry	30.10.12	29.10.12
Afghanistan: Progress in transition, preparation for the future	31.10.12	31.10.12
Tender outcomes of the Disability Employment Services	31.10.12	30.10.12
Government's response to people trafficking	27.11.12	26.11.12
Apology to people subjected to sexual or other forms of abuse in Defence	27.11.12	26.11.12
Senate ONLY	Tabled Senate	
Australia Network	7.2.12	
Queensland floods: Update on current emergency events	7.2.12	
Status of Queensland floods reconstruction	7.2.12	
House of Representatives ONLY		Tabled HoR
Hastie Group		30.5.12

ATTACHMENT 2

Temporary order for the consideration of ministerial statements presented other than in accordance with Standing Order 61

That the following amendment to standing order 169 operate as a temporary order for the remainder of the Parliament:

(3) At the end of standing order 169, add:

If a ministerial statement is presented to or tabled in the Senate other than in accordance with standing order 61, it shall be in order for a senator to move a motion without notice to take note of the statement. On any such motion, a senator may speak for not more than 10 minutes and paragraph (2) applies to the total time limit for individual or successive motions.

[Note: paragraph (2) would have the effect of placing a 30 minute time limit on the debate on one statement and a 60 minute time limit on debate on two or more statements presented consecutively.]



PARLIAMENT OF AUSTRALIA

JOINT COMMITTEE ON PUBLICATIONS

31 August 2015

Senator Marshall
Chair
Procedure Committee

Dear Senator Marshall

Over the past year the Joint Committee of Publications (JCP) has been considering various developments relating to the Parliament being provided with documents in digital format. You would be aware that in 2010 the Committee recommended the implementation of an electronic Parliamentary Paper Series (ePPS). The ePPS was implemented in 2013 and there is now interest in broadening its scope to include all documents presented to Parliament. Earlier this year the JCP requested the Minister for Finance to provide it with the Australian Government Printing and Publications Review. The review and the Minister's accompanying letter recommend "efficiencies in the production of digital and printed communication". The JCP wrote to the Minister indicating its support for online publishing and its role in continuing to identify efficiencies for the Parliamentary Papers Series. The JCP has also been briefed by the Senate Public Information Office about the e-chamber (ParkWork) project being undertaken by the Department of Parliamentary Services and how that project plans to provide a dedicated access point for documents presented to parliament on any sitting day. This project, of course, has the JCP's full support.

With this background in mind, the JCP has reviewed the standing orders which establish the powers of the committee, with particular reference to whether they remain relevant in respect of digital document developments. It was noted that the House standing orders and Senate standing orders differ (see attachment 1), with the Senate standing orders retaining a reference to "printing" at standing order 22(3)(a). At its last meeting the JCP agreed that, by removing the word "printing" from 22(3)(a), the "publication and distribution of parliamentary and government publications" could be more appropriately interpreted as referring to documents in both printed and digital format.

Accordingly, the JCP recommends that Senate standing order 22(3)(a) be amended to remove the word "printing" and would welcome the Procedure Committee's response to this recommendation.

I look forward to hearing from you.

A handwritten signature in black ink, appearing to read 'Barry O'Sullivan'.

Senator Barry O'Sullivan
Chair
Joint Committee on Publications

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Attachment 1

Extract from standing orders relevant to the joint committee's functions

Appointment of committees

Senate standing order 22

- 22 (1) A Publications Committee, consisting of 7 senators, shall be appointed at the commencement of each Parliament, with power to act during recess and to confer and sit as a joint committee with a similar committee of the House of Representatives.
- (2) All documents presented to the Senate which have not been ordered to be printed by either House of the Parliament shall stand referred to the committee, which shall make recommendations on the printing of documents.
- (3) When sitting with a similar committee of the House of Representatives, the committee shall also have power:
- (a) to inquire into and report on the printing, publication and distribution of parliamentary and government publications and on such related matters as are referred to it by the relevant minister; and
 - (b) to send for persons and documents.
- (4) The committee shall elect as its chair a member nominated by the Leader of the Government in the Senate.

House of Representatives standing order 219

- 219 (a) A Publications Committee shall be appointed to consider all documents presented to the House which have not been made a Parliamentary Paper by either House of the Parliament. The committee may report when it sees fit and may recommend a document be made a Parliamentary Paper, in whole or in part.
- (b) The committee shall consist of seven members.
- (c) If conferring with a similar committee of the Senate the committee may inquire into and report on the publication and distribution of parliamentary and government publications and on matters referred to it by a Minister.

