

13. Referring matters to committees

Why refer matters to committees?

The Senate delegates a range of tasks to its committees to ensure it is meeting all its responsibilities and is fully informed when making decisions. Committees provide convenient vehicles for conducting inquiries and examining issues because of their relatively small size, their ability to meet in a variety of places and the flexibility of their proceedings. They are able to receive written submissions and hear evidence on specified matters, and to examine issues in closer detail than is possible on the floor of the Senate. As numerous committee inquiries can be undertaken at the same time, many different issues can be examined and quickly reported back to the Senate.

What are the powers and functions of committees?

Committees have no powers of their own. The Senate, through its [standing orders](#) and resolutions, determines which of its powers will be delegated to committees and for what purpose. Each committee is established by orders of the Senate which define those delegated powers and functions and prescribe its size, composition and operations. Similarly, the terms of reference for each committee inquiry originate as orders of the Senate.

It is within the power of the Senate to establish a new committee to inquire into any matter within the competence of the Senate. However, most inquiries are undertaken by the Senate's well-established committee system. Within the committee system, different types of committees perform different functions. A full description of the structure and role of the Senate committee system can be found in [Senate Brief No. 4](#)—Senate committees.

How are matters referred to committees?

As noted above, the functions of committees and their terms of reference originate as orders of the Senate, by both houses of the Parliament or by legislation.

The orders or legislation that establish committees often allow for the automatic referral of particular matters to the committees. For these matters it is unnecessary for individual senators to take any action. Matters referred automatically to committees are often called standing references and are triggered by events, for instance, the presentation of a document (such as an annual report, legislative instrument or treaty) or the introduction of a piece of legislation.

References relating to other routine matters are often the subject of established practices by which matters are routinely referred, so that it is generally unnecessary for individual senators to take any action in the Senate to ensure their reference. Examples of this include the reference of estimates to legislation committees and the reference of bills to committees through the Selection of Bills Committee process.

For other, non-routine matters, the reference must be initiated by a senator taking advantage of an appropriate opportunity in the Senate.

In some areas a combination of these processes may apply. The approach taken varies with the subject matter of the proposed reference.

Reference of particular matters

General inquiries

To establish an inquiry into a matter that is *not* automatically referred to a committee the Senate must agree to an order giving effect to that reference. The usual process is for a motion to be passed by the Senate after a senator has given notice of the proposed reference. (see [Guide No. 8](#)—Notices of motion).

Where the committee in question is a **legislation committee** or a **references committee** established under [standing order 25](#) a senator may give notice of a proposed reference at any time during a sitting day before the adjournment is proposed, either by seeking the call when no other business is before the chair or by delivering the notice to the Clerk at the Table. A further advantage is that such a notice is classified as ‘business of the Senate’ under [standing order 58](#) which can be debated.

Usually the proposal is to refer matters to an existing committee. Occasionally the Senate will establish a new committee – known as a select committee – to undertake a specific inquiry. In this case the resolution proposing the reference must also spell out the powers, functions and composition of the new committee. The Clerk Assistant (Procedure) can assist non-government senators in drawing up such proposals.

Legislation

The most common method for the reference of a bill to a committee is through the adoption by the Senate of the recommendations of the [Selection of Bills Committee](#). This committee, established under [standing order 24A](#), has a standing reference to consider each bill introduced to determine whether it should be referred to a committee for inquiry and report.

The Selection of Bills Committee, comprising the whips of the major and any minor parties and four other senators, meets weekly when the Senate is sitting. Senators submit proposals to the committee for particular bills to be referred to the relevant standing or select committee. The committee then makes recommendations to the Senate about bills to be referred, the committees to which they are to be referred, and the reporting dates. Adoption of the report by the Senate has the effect of referring the bills as recommended. The committee operates on a consensus basis and reports any areas of disagreement to the Senate for resolution. The motion for the adoption of the report may be amended to vary the details of the recommendations or to add or delete bills.

Bills may also be referred to committees by motion after notice, as described above. Opportunities also arise during the consideration of legislation, by way of an amendment to the motion for one of the stages of consideration of a bill – typically the question for the second reading ([standing order 114\(3\)](#)), or the motion for the adoption of the report from the committee of the whole.

A further opportunity to propose the reference of a bill to a committee arises after the second reading of a bill. [Standing order 115\(2\)](#) provides that a motion to refer the bill to a committee may be moved at that stage without the requirement for notice. The legislative process is fully described in [Guide No. 16](#)—Consideration of legislation.

‘Time critical’ bills

Since 2009, the Senate has adopted measures to ensure that ‘time critical’ bills introduced into the House of Representatives during the budget estimates fortnight may be referred to committees before the Senate returns for the June sittings. A motion is moved referring bills introduced during that period with provisions commencing on or before 1 July to the relevant committee. A committee may decline to examine a bill if, by unanimous decision, it considers that there are no substantive matters requiring consideration.

Legislative scrutiny

The scrutiny of legislation by the Senate is also assisted by standing references to three legislative scrutiny committees.

The [Scrutiny of Bills Committee](#) established under [standing order 24](#) examines each bill against a set of scrutiny principles that focus on the effect of proposed legislation on individual rights, liberties and obligations, the rule of law and on parliamentary scrutiny.

The [Scrutiny of Delegated Legislation Committee](#) established under [standing order 23](#) scrutinises all instruments of delegated legislation against a set of scrutiny principles that focus on compliance with statutory requirements, the protection of individual rights and liberties, and principles of parliamentary oversight. More information on delegated legislation and on the work of the committee can be found in [Guide No. 19](#)—Disallowance or in [chapter 15](#) of *Odgers' Australian Senate Practice*.

The [Parliamentary Joint Committee on Human Rights](#) was established in 2012 through the enactment of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The committee examines all bills and legislative instruments for compatibility with international human rights standards.

Government agencies, annual reports and estimates

The eight legislation committees established under [standing order 25](#) each have a role in the scrutiny of government departments and agencies. There are four aspects to this scrutiny role. Three of them – the examination of annual reports of departments and agencies and the scrutiny of their performance, as well as the examination of any legislative instruments made in the portfolios allocated to them – exist as standing references in accordance with [standing order 25\(2\)\(a\)](#) and [standing order 25\(20\)](#).

The fourth aspect of this scrutiny – the consideration of the estimates of departments and agencies – is provided for in [standing order 26](#). The committees' consideration of estimates is triggered by a motion that is routinely proposed by a minister after the tabling of relevant budget documents, accompanying the introduction of the appropriation bills in the House of Representatives. Further information on the estimates process can be found in [Senate Brief No. 5](#)—Consideration of estimates by the Senate's legislation committees.

Internal operations of the Senate

Matters relating to Senate procedure may be referred to the [Procedure Committee](#) by resolution of the Senate, but are more typically referred by the President ([standing order 17\(3\)](#)).

A number of preconditions apply to the raising of matters of privilege for reference to the [Committee of Privileges](#). These are described in [Guide No. 20](#)—Parliamentary privilege.

A number of domestic committees exist which deal with matters relating to the internal operations of the Senate. The standing orders establishing these committees each contain standing references:

- [Appropriations, Staffing and Security Committee](#) ([standing order 19](#));
- Library Committee ([standing order 20](#));
- House Committee ([standing order 21](#));
- [Publications Committee](#) ([standing order 22](#)); and
- [Committee of Senators' Interests](#) ([standing order 22A](#)).

More information on these committees can be found in [Senate Brief No. 4](#)—Senate committees.

Need assistance?

For assistance with any of the matters covered by this guide, government senators or their staff should contact the Clerk Assistant (Table), on extension 3020 or ca.table.sen@aph.gov.au; and non-government senators or their staff should contact the Clerk Assistant (Procedure), on extension 3380 or ca.procedure.sen@aph.gov.au. Assistance with matters relating to committees is always available from the Clerk Assistant (Committees), on extension 3370 or ca.committees.sen@aph.gov.au.

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