

# Establishment of the Register of Senators' Qualifications

Agreed to on 3 April 2019

## Senators' qualifications

### Register of Senators' qualifications relating to sections 44 and 45 of the Constitution

(1) The Registrar of Senators' Interests shall, in accordance with procedures determined by the Standing Committee of Senators' Interests, maintain a Register of senators' qualifications (the Register), comprising material:

(a) provided by senators elected or appointed during the 45th Parliament, and entered into the Register of Senators' Interests as 'Statements in relation to citizenship';

(b) tabled on behalf of the Australian Electoral Commission in accordance with s.181B of Part XIV of the *Commonwealth Electoral Act 1918* in respect of elected senators;

(c) provided by senators appointed to fill casual vacancies, in a disclosure form prescribed by the Standing Committee of Senators' Interests; and

(d) provided by senators in accordance with the obligation to provide an attestation, supplementary information, or a statement under paragraphs (5), (6), (7) or (8).

(2) Other than as provided for in this order, the Standing Committee of Senators' Interests has the same powers and functions in relation to the Register as it does in relation to the Register of Senators' Interests.

(3) The Registrar shall publish the Register and any supplementary information as soon as practicable after a senator has provided documents to the Registrar, or after tabling of documents on behalf of the Australian Electoral Commission.

(4) The Registrar shall remove information from the published copy of the Register when a senator ceases to hold office as a senator.

### Requirement to provide statements and supplementary information

(5) Within 28 days of making and subscribing an oath or affirmation in accordance with section 42 of the Constitution, each elected senator shall provide to the Registrar a statement attesting to the Senate the accuracy and completeness of the material provided to, and tabled on behalf of, the Australian Electoral Commission in respect of the senator's last nomination for election in accordance with Part XIV of the *Commonwealth Electoral Act 1918*.

(6) In making an attestation in accordance with paragraph (5), a senator may provide supplementary material. Supplementary material may augment, explain, or correct earlier information, but must not result in removal from the Register of material that was previously entered on the Register.

(7) Within 28 days of making and subscribing an oath or affirmation in accordance with section 42 of the Constitution, each senator appointed to fill a casual vacancy shall provide to the Registrar a statement disclosing qualifications related to sections 44 and 45 of the Constitution.

(8) If a senator becomes aware that information they have attested to, in accordance with paragraphs (5) or (7), or subsequently provided in accordance with paragraph (6), can no longer be regarded as accurate, the senator shall provide supplementary material to the Registrar as soon as practicable, but no later than 28 days, after the senator becomes aware of the inaccuracy. Such supplementary material does not cause earlier material to be removed from the Register.

(9) The Standing Committee of Senators' Interests shall prescribe a form or forms for the purposes of paragraphs (5), (6), (7) or (8), which shall be consistent with the disclosure requirements in Part XIV of the *Commonwealth Electoral Act 1918*.

### Consideration of possible disqualification matters

(10) The Senate will deal with any question concerning a senator's qualification under the Constitution only in accordance with the following procedures, and not otherwise.

(11) If a senator becomes aware of circumstances that give rise to a possible disqualification under sections 44 or 45, arising from facts not disclosed either on the Register during the immediate preceding Parliament, or in accordance with Part XIV of the *Commonwealth Electoral Act 1918*, the senator may provide a statement of those circumstances to the President. Any material redacted from the material entered onto the Register, including redactions from documents tabled on behalf of the Australian Electoral Commission is taken not to have been disclosed.

(12) If, and only if, a matter satisfies the conditions in paragraph (11), the President shall, as soon as practicable, report the matter to the Senate, and the senator who raised the matter may give notice of a motion to refer the matter to the Standing Committee of Senators' Interests for inquiry and report.

(13) Before reporting on such a matter, the Standing Committee of Senators' Interests shall provide a reasonable opportunity for a senator affected by the reference to respond to the allegations, to the evidence before the committee, and to any recommendation the committee proposes to make.

(14) If, on the evidence before it, the Standing Committee of Senators' Interests considers that there is sufficient doubt about a senator's qualifications, then the committee may recommend that the matter be referred to the Court of Disputed Returns under section 376 of the *Commonwealth Electoral Act 1918*; however, the Standing Committee of Senators' Interests shall not make such a recommendation unless it determines that the question arises from facts not disclosed either on the Register during the immediate preceding Parliament, or in accordance with Part XIV of the *Commonwealth Electoral Act 1918*.

(15) When a question respecting a senator's qualification turns solely upon the interpretation or application of foreign citizenship law, the Standing Committee of Senators' Interests shall not recommend that the question be referred to the Court of Disputed Returns unless the committee has taken evidence from experts in the relevant foreign law and the committee considers there is a sufficient possibility that the senator is or was a foreign citizen under the relevant foreign law at the relevant time.

#### **Referral to Court of Disputed Returns**

(16) Notwithstanding anything contained in the standing orders or any other resolution, no senator may move a motion to refer any question to the Court of Disputed Returns under section 376 of the *Commonwealth Electoral Act 1918* unless the Standing Committee of Senators' Interests has considered whether the matter be so referred and reported to the Senate. After the committee has made such a report, a senator may, without notice, move to refer the matter to the Court of Disputed Returns.

#### **False statements or omissions regarded as contempt**

(17) Any senator who:

- (a) knowingly fails to provide the material required by this resolution to the Registrar within the required timeframe; or
- (b) knowingly fails to correct an inaccuracy in any material within the required timeframe; or
- (c) knowingly provides false or misleading information to the Registrar;

shall be guilty of a serious contempt of the Senate and shall be dealt with by the Senate accordingly.

(18) A question of whether any senator has committed such a serious contempt shall first be referred to the Standing Committee of Privileges for inquiry and report.

(19) This order is of continuing effect.