

The Senate

Procedure Committee

Parliamentary Code of Conduct

Formal business

Closing the Gap statement

Indigenous Australian languages

First report of 2019

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Senator the Hon Penny Wong (Leader of the Opposition in the Senate)

Senator Catryna Bilyk (Tasmania)

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Procedure Committee

First report of 2019

The committee reports to the Senate on the following matters.

Parliamentary Code of Conduct

On 29 November 2018, the Senate referred to the committee adoption of a Parliamentary Code of Conduct proposed by the Leader of the Australian Greens, Senator Di Natale. The text of the proposed code is reproduced in Appendix 1. Senator Di Natale's motion proposing the adoption of the code was amended to instead refer it to the committee. The code is similar to one proposed by the Australian Greens and considered by the committee in its first report of 2017.¹ On that occasion, the committee did not agree to adopting the code as an order of the Senate, and similarly did not agree to related amendments proposed to standing order 193.

The committee asked its members to raise the new proposed code with other senators, particularly through their party room meetings. Members continue to report different views about the value and content of such a code and the committee does not recommend its adoption.

The committee draws the attention of all senators to the statements made by the President on 13 August 2018 and 28 November 2018, decrying the use of offensive, unparliamentary epithets in debate and reminding senators that personal abuse has no place in the Senate, particularly if it targets personal attributes, such as race or gender.

Formal business

Background

The committee reports on two matters connected to the consideration of formal business.

First, in 2018, the President referred to the committee concerns about the length and content of notices of motions, identifying 'a significant drift away from both the requirement that notices be succinct and that they not contain extraneous matter'. The President also noted an increase in the number of statements being made by leave at formal business time. The reference asked the committee to consider the adequacy of

1 Senate Standing Committee on Procedure, [First Report](#), December 2017.

rules and practices concerning the format and content of notices of motion, and their consideration as formal business. The President's letter is shown at Appendix 2.

More recently, on 4 December 2018, the Senate referred the following matter to the committee:

That the standing orders relating to the routine of business be reviewed to assess whether a limit should apply to the consideration of formal motions, or other procedural changes be made to limit the time taken for the consideration of formal motions in a sitting week.

In considering these matters the committee noted several trends in the use of the formal business procedure and considered a range of procedural options, as shown in Appendix 3.

The graphs included in Appendix 3 demonstrate the increased use of the procedure (more requests for formality), increased contestability (more divisions; more denials of formality, more suspension motions) and more statements by leave. No doubt that is in part explained by the current composition of the Senate, with its large and diverse crossbench. Even accepting those trends, however, the increases seen in these areas in 2018 – and even more so in the first few sittings of 2019 – far exceed those in previous years.

On 28 November 2018, the committee recommended a temporary order to prohibit debate on suspension of standing order motions connected to formal business, which was adopted the same day. The committee **recommends** that the temporary order be adopted on a permanent basis.

However, the committee is reluctant to recommend adding any further procedural complexity to this process at this stage in the parliamentary cycle. The Senate may wish to consider some of the options referred to this report in the 46th Parliament, should 2018 and the first part of this year prove not to be an outlier in the use of these procedures.

One of the main contributors to the length of time spent on formal business is the number of statements being made by leave. The committee has previously referred to such statements as 'misuse of the procedure' (first report of 2003) and criticised their content and prevalence (first report of 2004, second report of 2011). Nevertheless, senators now see them as a routine part of the formal business process. It is hard to see how the time spent on formal business may be reduced unless senators agree to make fewer such statements.

Again, the Senate may wish to consider these matters further in the next Parliament.

Closing the Gap statement

Indigenous Australian languages

The President referred the above matters to the committee, on 13 March 2019, at the request of the Manager of Opposition Business, Senator O'Neill. Senator O'Neill's letter is reproduced at Appendix 4. Each matter proposes procedural changes.

The first proposal asks that the Senate add to its current practices surrounding consideration of the Prime Minister's annual 'Closing the Gap' statement. Senator O'Neill proposes a short suspension of Senate sittings to enable senators to attend the presentation of the statement in the House of Representatives.

The second proposal is that, where evidence is taken before a Senate committee in an Indigenous Australian language, the Senate requires that the evidence be transcribed in Hansard both in that language and in English.

The committee asks that senators consider these two matters, with the expectation that they will be considered further by the committee in the next Parliament.

Senator Sue Lines

Chair

Additional comments by Australian Labor Party

In 2016, Labor proposed a revised version of the *Parliamentarians' Code of Race and Cultural Ethics*:

As a member of the Australian Federal Parliament I agree:

- 1. To act in a manner which upholds the honour of public office and the Parliament;*
- 2. To respect the religious and cultural beliefs of all groups living within Australia in accordance with the Universal Declaration of Human Rights;*
- 3. To uphold principles of justice and tolerance within our multicultural society making efforts to generate understanding of all minority groups;*
- 4. To recognise and value diversity as an integral part of Australia's social and economic future;*
- 5. To help without discrimination all persons seeking assistance;*
- 6. To speak and write in a manner which provides factual commentary on a foundation of truth about all issues being debated in the community and the Parliament;*
- 7. To encourage the partnership of government and non-government organisations in leading constructive and informed debate in the community;*
- 8. To recognise the significance of Indigenous culture and to promote reconciliation with and constitutional recognition of Indigenous Australians.*

All members of Labor's caucus have voluntarily signed the Parliamentarians' Code of Race and Cultural Ethics. Despite the invitation to other senators and members to join Labor in signing this code, none have.

In March 2019, the Leader of the Opposition, Mr Shorten, wrote to the Prime Minister, Mr Morrison, with a copy of the code, requesting that he join with Labor to make an important symbolic statement – to acknowledge that we, as parliamentarians, have a responsibility to take care with our words and actions. To have both major parties sign the code would send an important message – we will not stand for racist or bigoted attitudes within our Parliament.

Disappointingly, Mr Morrison is yet to even commit to putting the code to his own joint party room, or say that he himself will sign. Mr Morrison's silence on this matter is mystifying. It should be a simple matter, requiring leadership from the leader of the nation on this important issue. It is time to take a more positive step.

Labor senators believe voluntarily signing the Parliamentarians' Code of Race and Cultural Ethics is the best way to demonstrate a commitment to a set of standards that the Australian public expect their parliamentarians to abide by on matters of race and culture. It is time for leaders to unite in condemning the hateful and divisive rhetoric of those who seek to stoke racism and other forms of bigotry for political ends – not just with our words, but with our actions too.

To have senators and members from across the Parliament as signatories to this code would send an unmistakable message to the Australian community that its representatives completely reject any form of division or discrimination on the grounds of race or religion. It is what the people of Australia expect us to do.

Following Senator Hanson's return to the Parliament in 2016, all members of the Labor Caucus signed the code, modelled on an earlier version put to the Parliament in 1998 by Labor senator Margaret Reynolds, after Ms Hanson was first elected to the House of Representatives. The original code was in response to a climate of heightened racial anxiety, division and misinformation at the time. The 1998 Code of Race Ethics was signed by more than half the Parliament, including coalition senators and members.

Despite an invitation by Mr Shorten to then-prime minister Malcolm Turnbull, to put the updated code to his joint party room in 2016, regrettably no commitment was demonstrated by the Liberal and National parties. Now is the time for Liberals and Nationals to change their minds. Now is the time for Mr Morrison to show some leadership to put a stop to bigotry.

The invitation to all senators and members to sign the Parliamentarians' Code of Race and Cultural Ethics remains open.

Senator Sue Lines

Senator the Hon Penny Wong

Senator Catryna Bilyk

Senator Deborah O'Neill

Australian Greens Dissenting Report

The Australian Greens are firmly of the view that there is a strong need for a Parliamentary Code of Conduct. We are therefore disappointed that the Procedures Committee does not recommend its adoption.

As noted by the committee, the motion from November 2018 was not the first time the Greens had presented such a motion. Nor was it the first time that a code of conduct has been proposed.

Indeed there have been proposals made to adopt a code of conduct over a period of over 40 years.

Previous calls for a Code of Conduct

In September 1975, a Joint Committee on Pecuniary Interests of Members of Parliament stated that it ‘felt that a precise and meaningful code of conduct should exist’. It recommended that a Joint Standing Committee be established and be given the task of drafting a code, but this recommendation was not implemented.

Four years later, an inquiry into public duty and private interest, chaired by Sir Nigel Bowen, recommended that a code of conduct be implemented for officeholders, including members of parliament. Only a register of interests resulted from that process.

In 1991 the Prime Minister proposed that a working group of parliamentarians be established to develop a seminar on the standards of conduct expected of senators and members. This subsequently evolved into a working group looking to develop a code of conduct. That working group did not complete its task before the 1993 election.

Over the next two years, a working group was convened to develop a code of conduct for both Senators and Members and for Ministers. The working group proposed ‘A framework for ethical principles for Members and Senators’ and ‘A framework of ethical principles for Ministers and Presiding Officers’. Progress on these frameworks lapsed at the end of the 37th Parliament and they were not revisited.

Despite the welcome introduction of a Ministerial code of conduct in 1996 under Prime Minister John Howard and the subsequent Standards of Ministerial Ethics progressed in 2007 under Prime Minister Kevin Rudd, a code of conduct for all parliamentarians was not discussed again until 2008.

That year the House of Representatives Committee of Privileges and Members’ Interests stated that there were strong reasons for a code being established, not least of which were community expectations about standards of behaviour by

parliamentarians. The Committee indicated it proposed to review the question of a code of ethics for members and report back to the House.

The Committee had not completed its consideration of this matter at the conclusion of the 42nd Parliament.

As part of the process of negotiations for a minority government in the 43rd Parliament, agreements were made for a code of conduct to be implemented for Federal Parliamentarians and for the appointment of a Parliamentary Integrity Commissioner who would have responsibility for, among other things, upholding the code and investigating complaints in relation to the code.

The House of Representatives Committee of Privileges and Members' Interests was tasked with producing such a code and developing plans for a Parliamentary Integrity Commissioner. By November 2011, the Committee had explored a wide range of options on a code and its implementation and had taken evidence from other parliaments and experts around the world. However they presented their findings as a 77 page discussion paper, rather than recommendations for a code. Their findings were not adopted.

A Senate committee also investigated options for a code of conduct and reported in 2012. However they concluded that “[t]he committee is not convinced that there is any objective evidence showing that the adoption of an aspirational, principles-based code has improved the perceptions of parliaments and parliamentarians in other jurisdictions. Accordingly, the committee does not recommend that the Senate go down that path.”

Recent calls for a Code of Conduct

Six years after the discussion paper was published, Senator Pauline Hanson wore a burka into the Senate. Her deeply disrespectful act was roundly criticised, but without a code of conduct, there were few consequences. At that time, the Greens proposed a code of conduct on respecting cultural diversity. That code was referred to the Procedures Committee and was ultimately prevented from progressing any further by Labor and Liberal Senators.

In February of 2018 Federal Independent Member for Indi, Cathy McGowan tabled a motion in the House of Representatives aimed at encouraging a discussion about the introduction of a Code of Conduct in the Australian Parliament.

The motion, seconded by the Member for Denison, Andrew Wilkie, asked the Privileges and Members' Interests Committee to develop a code of conduct for Members of Parliament and their staff. It took into account the previously endorsed draft code of conduct contained in a discussion paper to the House of Representatives in 2011. However it was not selected for debate and is still sitting on the notice paper.

The Greens subsequently introduced a motion in the Senate in late 2018 with the intention of creating a Federal Parliamentary Code of Conduct. The motion sought to:

- Uphold the honour of public office;
- Respect and value the First Nations peoples of Australia;
- Respect Australians' diversity;
- Respect gender equality and diversity; and
- Reject discriminatory and exclusionary statements.

Again, the motion was referred to the Procedures Committee and it is in relation to the committee's report on this most recent referral that the Greens have produced this dissenting report.

It is the view of the Australian Greens that the committee's conclusions do not take into account the strength of public opinion in favour of a code of conduct in the wake of the terrorist attack in Christchurch.

Public support for a Code of Conduct

The Islamic Council of Victoria, along with another 19 Muslim organisations, wrote to the leaders of the major parties in early 2019 calling for the adoption of a parliamentary code of conduct;

“As Australians we expect there to be vigorous debate in the parliament about the policies and issues that impact our nation. Lately however we have seen a spike in the politics of fear in federal parliament. We are concerned that the damaging rhetoric our political leaders are engaging with is driving a wedge between sections of our community. It is happening abroad with damaging consequences and Australia must resist this horrible trend. That is why we support the introduction of a Code of Conduct for all Parliamentarians, so that our parliamentarians can no longer use race baiting and fear mongering as a tactic for their own short-term political gains.”

Following the Christchurch massacre and the deeply offensive comments made by Senator Fraser Anning, the ICV began a petition in support of the calls for a code of conduct. As of April 2nd 2019, the petition had attracted more than 45,000 signatures.

Conclusion

In conclusion, it is the view of the Australian Greens that there is a compelling need for a Parliamentary Code of Conduct, as well as clear public support. Simply reminding members of Parliament that they should avoid using “unparliamentary epithets in debate” will do little to establish a set of clear expectations and standards,

nor will it provide the reporting and enforcement mechanisms required to uphold such standards.

Senator Rachel Siewert

Appendix 1

Matter referred by the Senate – Parliamentary Code of Conduct

4330

No. 133—29 November 2018

20 Proposed Parliamentary Code of Conduct

Motion determined as not formal: The Leader of the Australian Greens (Senator Di Natale) requested that general business notice of motion no. 1262 standing in his name for today, relating to a proposed Parliamentary Code of Conduct, be taken as formal. An objection was raised and the motion was not proceeded with as a formal motion.

Suspension of standing orders: Senator Di Natale moved—That so much of the standing orders be suspended as would prevent the motion being moved immediately and determined without amendment or debate.

Question put and passed.

Senator Di Natale moved—

- (1) That the Senate adopt the following Code of Conduct, for inclusion in the Senate standing orders:

PARLIAMENTARY CODE OF CONDUCT

PREAMBLE

The (House of Representatives and the) Senate have reached agreement on a Code of Conduct which is to apply to all members of Parliament.

Members of Parliament recognise that they are in a unique position of responsibility in influencing the nature of civic conduct in Australia.

Members of Parliament recognise that their words and actions in the Senate (and the House of Representatives) influence issues in the public debate, and these include issues relating to multicultural affairs, migration and citizenship, gender equality and professional conduct in the workplace.

Members of Parliament acknowledge that parliamentary privilege protects the right of members to participate freely in debate in the Parliament without fear of prosecution.

Members of Parliament recognise the need to exercise their valuable right of freedom of speech in a responsible manner, and a failure to do so may have serious implications for individuals and groups of the Australian

community and may diminish the social cohesion that is essential to our national character.

THE CODE

1. Uphold the honour of Public Office

- (a) Members of Parliament will take all reasonable steps to represent public office in a manner that is consistent with the values of respect and inclusion; and
- (b) This includes behaviour and language during parliamentary proceedings, including interactions with parliamentary and electorate office staff.

2. First Peoples of Australia, the Aboriginal and Torres Strait Islander peoples

- (a) Members of Parliament recognise the value and contribution of the First Peoples of Australia, the Aboriginal and Torres Strait Islander peoples.
- (b) Members of Parliament recognise that with the exception of Aboriginal and Torres Strait Islander peoples, Australia is a nation of migrants.

3. Respect Australians' diversity

- (a) Members of Parliament recognise that Australia has been enriched by the diversity of colour, ethnic origin, culture and religious belief that exists within our nation.
- (b) Members of Parliament recognise that principles, including respect for religious and cultural diversity, tolerance and justice should be upheld in parliamentary debate in a respectful manner.

4. Respect gender equality and diversity

- (a) Members of Parliament recognise that women and LGBTIQ+ individuals are more likely to experience gender inequality and discrimination in the workplace;
- (b) Members of Parliament recognise that the Australian Parliament, including the Senate and House of Representatives Chamber, is the primary workplace for elected representatives; and
- (c) Female and elected representatives from LGBTIQ+ communities should be free from gender and sexuality-based bullying, harassment or abuse of any kind in their workplace.

5. Reject discriminatory or exclusionary statements

(d) Members of Parliament will not knowingly humiliate or degrade an individual or community based on their colour, national or ethnic origin, culture, religious belief, gender or sexual orientation.

(e) This includes acts which are intended to incite hatred or create fear of a community.

(2) That this resolution be communicated to the House of Representatives for concurrence.

Reference to committee: The Assistant Minister for International Development and the Pacific (Senator Ruston) moved the following amendments together by leave:

Paragraph (1), omit “That the Senate adopts the following Code of Conduct, for inclusion in the Senate standing orders”, substitute “That the Senate acknowledges the proposal for the following Code of Conduct”.

Omit paragraph (2), substitute:

(2) That this matter be referred to the Procedure Committee for consideration and report by 14 February 2019.

Statements by leave: Senator Chisholm, the Leader of Pauline Hanson’s One Nation (Senator Hanson) and Senators Di Natale and Anning, by leave, made statements relating to the motion.

Question—That the amendments be agreed to—put and passed.

Main question, as amended, put and passed.

Appendix 2




PARLIAMENT OF AUSTRALIA

PRESIDENT OF THE SENATE
SENATOR THE HONOURABLE SCOTT RYAN

REF: PC18-000243

Senator Sue Lines
Deputy President of the Senate
Chair of Committees
Parliament House
CANBERRA ACT 2600

Dear Senator  Lines

I am writing to you as Chair of the Procedure Committee to ask that the Committee consider the adequacy of rules and practices concerning the format and content of Notices of Motion.

Standing order 76(7) requires that, *"A notice shall consist of a clear and succinct proposed resolution or order of the Senate relating to matters within the competence of the Senate, and shall not contain statements, quotations or other matter not strictly necessary to make the proposed resolution or order intelligible."*

An examination of Notice Papers from recent years would identify a significant drift away from both the requirement that notices be succinct and that they not contain extraneous matter, a fact that has been drawn to my attention by senators on multiple occasions. Although standing order 76(8) permits the President to delete extraneous matter or require senators to reframe notices which are not in order, these powers have been exercised with great circumspection for many years; a practice I would prefer not to change unilaterally – although I note that Presidents in the 1990s tended to be more active in this regard.

The language of these standing orders 76(7) and (8) was proposed by the Procedure Committee in a report dated June 1989. The committee noted the tendency of senators to include statements, arguments and materials which it regarded as more appropriate for debate on the motions, rather than included in the motion text itself. The report suggested that longer argumentative motions were contrary to the rationale of formal business, which was intended to be restricted to formalities necessary for the conduct of the chamber.

For my own part, I consider that longer, more complex notices moved at formal business time also tend to generate more of the already ubiquitous 'one minute statements'; a practice which tends to allow government, opposition and party leaders to put their party positions, but denies backbench senators the same opportunity. I am concerned at this particular impact as well as the possibility that as motions become increasingly complex and senators are denied opportunities, the only option remaining is to deny leave for a motion to be taken as formal, which in my view would impact the wider operation of the chamber.

It may also be relevant to consider that the growth in the contribution of 'one minute statements' was initially undertaken in lieu of divisions being called. This 'trade off' is slipping away and it is now common to have a division following statements by leave.

If the committee considers that any changes to the rules or practices for dealing with such notices are desirable, I would appreciate the committee reporting to the Senate on that matter.

Yours sincerely

SCOTT RYAN

29 May 2018

Appendix 3

In considering whether there was a need for procedural change in relation to the formal business procedure, the committee noted several trends in its use:

- a trend toward longer notices: the recent average word count has been above 180 words; the equivalent average in 2000 was half that, 92 words
- a trend toward more numerous statements by leave: such statements were rare before 2009, were made to 1/6th of motions in 2011 and to 2/3 of motions in 2018
- the average time spent on formal business has increased from 22 minutes per day in 2012 to 46 minutes per day in 2018; on some days formal business has taken as long as two hours, with flow-on effects for other business.

The graphs, below, show further trends in the use of the procedure.

The committee considered a range of procedural options, including:

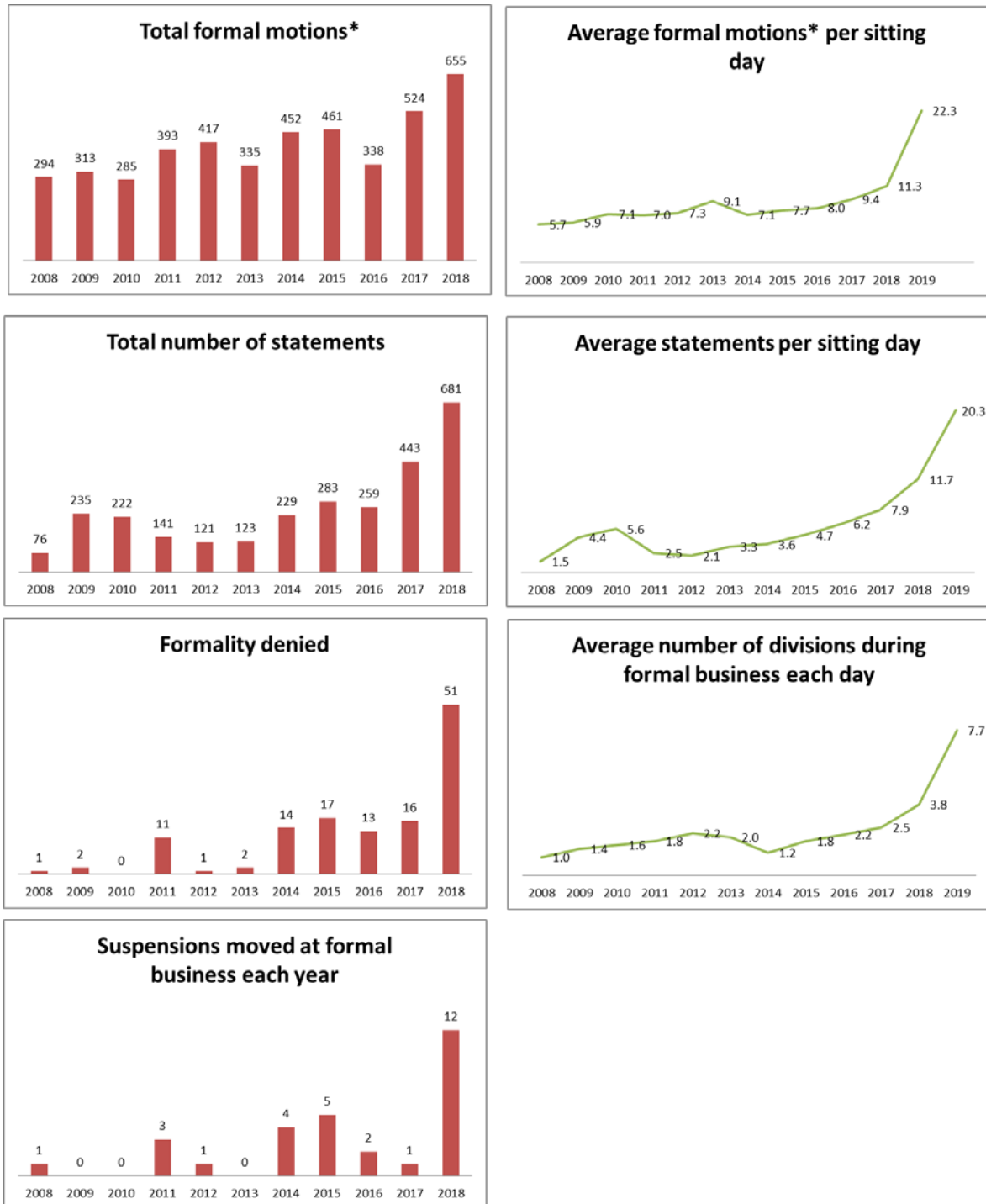
- regulating the length of notices, by imposing a word limit
- regulating the number of motions a senator may propose as formal on any day
- more rigorously enforcing the requirements in standing order 76(7) that prohibit extraneous material in notices
- requiring a longer period of notice for formal motions to provide additional time to negotiate and finalise their content
- 'streamlining' divisions, by deferring them to the end of formal business, or another time
- imposing a time limit on formal business, with motions deferred if not reached
- limiting the number of notices which may be dealt with as formal on any given day.

The committee considered recommending two changes – strict word limits on non-technical notices and limits on the number of requests for formality that may be entertained from each senator in a given week – but decided not to proceed after consulting senators.

The committee also considered whether it was desirable to change the process for seeking to suspend standing orders during formal business time, or to remove the

ability to suspend standing orders at all during this period, and agreed to recommend that the temporary order adopted on 28 November 2018 be made permanent.

Graphs relating to formal business



* routine motions for Senate committee extensions and meetings have been excluded, noting that the requirement to move those motions was removed in 2015

Appendix 4



PARLIAMENT OF AUSTRALIA

PRESIDENT OF THE SENATE
SENATOR THE HONOURABLE SCOTT RYAN

REF: D19/19667

Senator Sue Lines
Chair
Senate Standing Committee on Procedure
Suite SG.44
Parliament House
Canberra ACT 2601

Dear Chair

Reference of matters to the Senate Standing Committee on Procedure

I have received a letter from the Manager of Opposition Business, Senator O'Neill, asking that I refer two matters to the Procedure Committee, pursuant to standing order 17(3). Those matters involve:

- suspending the sittings of the Senate to enable senators to attend the presentation of the annual Closing the Gap statement, and
- the transcription of Indigenous Australian languages into Hansard.

I am happy to refer the two matters, as requested. A copy of Senator O'Neill's letter is attached.

Yours sincerely

SCOTT RYAN

13 March 2019



Senator Deborah O'Neill
NEW SOUTH WALES

Monday, 25 February 2019

Dear Mr President,

In accordance with standing order 17(3), I request that the following matters be referred to the Procedure Committee:

Closing the Gap Statement

A resolution, or amendment to the existing continuing order relating to parliamentary consideration of the Closing the Gap report, requiring that the sittings of the Senate be suspended for the presentation in the House of the annual Closing the Gap Statement:

That each year, on the day on which the Prime Minister presents the annual report on progress in meeting the 'Closing the Gap' targets, the sitting of the Senate be suspended 30 minutes prior to the time set for the presentation of the report in the House of Representatives, until the ringing of the bells, to enable senators to attend.

Indigenous Languages and Hansard

When committees take evidence in Indigenous languages that the Hansard record of proceedings recorded the language in which the evidence was given, the Indigenous language, as well as an English translation. An amendment to the standing orders along the following lines may achieve that end:

At the end of standing order 35, add:

(3) *If evidence is heard by a committee in an Indigenous Australian language the transcript of that evidence shall record both:*

(a) *the evidence as submitted in the Indigenous Australian language; and*

(b) *an English translation of the evidence.*

The phrase 'Indigenous Australian language' has been used noting that it appears to be the term used by the Australian Institute of Aboriginal and Torres Strait Islander Studies.

In addition, alongside this amendment the following resolution expressing a preference that the transcription of the evidence as submitted and its translation be supported by the witness or a person from their community, along the following lines:

The Senate resolves that, where a committee has heard evidence in an Indigenous Australian language, the transcription by Hansard staff of the evidence as submitted, and its translation into English, should be assisted by the person who gave the evidence or a person from their community.

Yours sincerely,

SENATOR DEBORAH O'NEILL

