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AUSTRALIAN SENATE PRACTICE

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SUPPLEMENT

UPDATES TO 30 JUNE 2009

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INTRODUCTION

This supplement updates to 30 June 2009 material in the 12th edition of *Odgers' Australian Senate Practice*, which reflected developments to 30 June 2008.

The supplement is issued in printed and electronic form, and updated every six months until the next edition is published.

Users of the book should refer to the material in the supplement by the page and paragraph number of the text in the book.

Harry Evans
Clerk of the Senate
Editor
July 2009

CHAPTER 2

PARLIAMENTARY PRIVILEGE: IMMUNITIES AND POWERS OF THE SENATE

p. 49 paragraph 1

also *US v Jefferson*, US Court of Appeals, 12/11/2008, not reported (mere incidental reference to legislative acts does not amount to using them to support a prosecution)

p. 55 paragraph 4, end

For a statement by President Hogg on this point, see SD, 28/8/2008, p. 3981.

p. 60 after paragraph 4

A reference to the Economics Committee in 2008 required it to “call for” documents in the possession of the Western Australian government, a phrase interpreted to mean that the committee would request the state government to produce the documents (28/8/2008, J.748-9).

p. 76 paragraph 1

responses by members of organisations: see also 127th report of the committee, PP 122/2006, adopted 21/6/2006, J.2328; 135th report, PP 338/2008, adopted 24/9/2008, J.940; 137th report, PP 5/2009, adopted 10/2/2009, J.1579

CHAPTER 5

OFFICERS OF THE SENATE: PARLIAMENTARY ADMINISTRATION

p. 116 paragraphs 6 and 7

The practice whereby questions could be addressed to the President was put into standing order 72 in 2009 (10/3/2009, J.1657-8).

CHAPTER 6

SENATORS

p. 136 paragraphs 1-3

Questions to senators and to chairs of committees at question time were abolished in 2009 (10/3/2009, J.1657-8).

CHAPTER 7

MEETINGS OF THE SENATE

p. 149 paragraph 2, end

(This time limit may be extended to 20 minutes on Tuesday by leave or at the end of debate: SO 54(6), adopted 10/3/2009, J.1657-8.)

CHAPTER 9

MOTIONS AND AMENDMENTS

p. 177 paragraph 1, end

In 2008 a disallowance motion was brought on early by leave and then withdrawn pursuant to notice of intention under standing order 78 (15/9/2008, J.833, 16/9/2008, J.848; see chapter 15, Delegated Legislation and Disallowance, under Withdrawal of notice of motion).

p. 182 paragraph 2, end

proposed rescission of disallowance motion: also 16/9/2008, J.857

CHAPTER 10

DEBATE

p. 192 last paragraph, (c)

The 10-minute time limit may be extended to 20 minutes on Tuesday by leave or at the end of debate (SO 54(6), adopted 10/3/2009, J.1657-8).

CHAPTER 11

VOTING AND DIVISIONS

p. 223 paragraph 5

The temporary order (no divisions after 4.30 pm on Thursdays) was put into standing order 57 in 2009 (10/3/2009, J.1657-8).

CHAPTER 12

LEGISLATION

p. 239 paragraph 3

provisions of bills referred to committees in advance of their introduction into either House: 15/10/2008, J.1023-4; 14/5/2009, J.1957-8, 1966-7

p. 242 paragraph 3

National Rental Affordability Scheme Bill 2008 and an associated bill, 13/11/2008, J.1213

p. 258 paragraph 4, end

see also customs and excise bills, 18/3/2009, J.1761-2; Fair Work Bill 2008, 20/3/2009, J.1866-8

p. 264 paragraph 3, end

also luxury car tax bills, 17/9/2008, J.872; Social Security Legislation Amendment (Employment Services Reform) Bill 2008, 4/2/2009, J.1525

p. 265 paragraph 3

private senator's bill given precedence: Urgent Relief for Single Age Pensioners Bill 2008, 22/9/2008, J.889-90; Independent Reviewer of Terrorism Laws Bill 2008, 11/11/2008, J.1131-2

p. 265 after paragraph 3

On 13 May 2009 government legislation to establish the National Broadband Network was postponed until the government produced information required by an order of the Senate (13/5/2009, J.1934; 25/6/2009, J.2194).

On 23 and 25 June 2009, the non-government parties in the Senate gave precedence over the government's Carbon Pollution Reduction Scheme legislation to several other government bills, and postponed the former to the next period of sittings, while specifying the day on which it would finally be dealt with (23/6/2009, J.2146; 25/6/2009, J.2195-8).

CHAPTER 13

FINANCIAL LEGISLATION

p. 273 after paragraph 4

Where a statute contains a standing and indefinite appropriation of money for the purposes of the statute, for example, to pay for entitlements conferred on recipients of benefits, a bill which alters the terms of the statute may lead to increased expenditure from the appropriation, but is clearly not an appropriation bill as such; if such a bill were to be so misclassified as an appropriation bill, there would be no principled way of distinguishing it from many other bills which lead to increased expenditure but do not appropriate the money. In spite of this, the government in 2008, wishing to resist a private senator's bill passed by the Senate, claimed that it was "unconstitutional" in extending pension entitlements, and suppressed debate on both this claim and the bill itself in the House of Representatives. (Urgent Relief for Single Age Pensioners Bill 2008; see advice to senators, SD, 24/9/2008, pp 5528-30; see also below, under When requests are required: (c) proposed charge or burden.)

On 12 November 2008 the government circulated in the Senate government amendments to be moved to a bill, including an amendment to insert a standing appropriation into the bill. When it was pointed out by Senate officers that moving such an amendment would involve initiating an appropriation in the Senate, the amendment was withdrawn from circulation (Same-Sex Relationships (Equal Treatment in Commonwealth Laws – Superannuation) Bill 2008).

p. 275 paragraph 1, end

The purposes for which appropriations may be made, however, may yet be limited by the Constitution: *Pape v Commissioner for Taxation*, High Court, 7/7/2009, not yet reported.

p. 275 after paragraph 5

In 2009, as part of its legislation to deal with the global financial crisis, the government presented, and the Senate passed, an amendment of the Commonwealth Inscribed Stock Act giving the government a permanent authority to borrow money by issuing bonds. The Senate, however, amended legislation providing a Commonwealth guarantee of state and territory borrowings to require that a register of all government borrowings be established (18/6/2009, J.2111-2).

p. 283 paragraph 1, end

also luxury car tax bills, SD, 22/9/2008, p. 5274; excise (condensate) bills, SD, 25/9/2008, p. 5638; road charges bills, SD, 3/12/2008, p. 7989 (government amendments circulated as amendments)

p. 287 paragraph 2, end

A similar amendment was passed to the additional appropriation bills in 2009 (20/3/2009, J.1865, 1868-9).

p. 295 paragraph 2

Government amendments to the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Further 2008 Budget and other Measures) Bill 2008 were also moved as amendments on this principle (1/12/2008, J.1349-50, 1362).

p. 303 paragraph 1, end

These bills were eventually rejected, after the taxes had been collected for almost a year (18/3/2009, J.1761-3, 1774-6). Bills to validate the collection of the taxes during their first year were subsequently passed, but the government continued to collect the taxes thereafter (13/5/2009, J.1925-6).

p. 308 paragraph 1, end

For an example of this, see customs and excise bills, 18/3/2009, J.1761-3, 1774-6.

p. 312 paragraph 3, end

In 2008 the Community Affairs Committee was directed to hold “cross-portfolio” estimates hearings on indigenous affairs (26/8/2008, J.683).

CHAPTER 15

DELEGATED LEGISLATION AND DISALLOWANCE

p. 330 paragraph 6

On 24 June 2009, an Opposition senator tabled by leave ministerial directions under the Building and Construction Industry Improvement Act, and then gave notice of motion to disallow the directions, which were subsequently disallowed (24/6/2009, J.2169, 2171; 25/6/2009, J.2201-2).

p. 339 after paragraph 2

For notice of a disallowance motion brought on early by leave and then withdrawn pursuant to notice of intention, see 15/9/2008, J.833, 16/9/2008, J.848.

p. 342 paragraph 3, end

proposed rescission of disallowance motion: also 16/9/2008, J.857

CHAPTER 16

COMMITTEES

p. 357 after paragraph 1

An unusual order passed by the Senate on 14 May 2009, in referring legislation to committees before its introduction into either House, empowered the Selection of Bills Committee to vary the references (14/5/2009, J.1957-8; 15/6/2009, J.1989-90).

pp 360-2 The Senate on 13 May 2009, on the recommendation of the Procedure Committee, restructured the legislative and general purpose standing committees to return to the system of dual committees which was in operation from 1994 to 2006. As under that previous structure, each of the standing committees have two versions in their subject area, with a legislation committee with a government party majority and a government party chair, and a references committee with a non-government majority and a non-government chair. The legislation committees inquire into bills, conduct the estimates hearings and carry out the continuing oversight of government departments and agencies, while the references committees inquire into other matters referred to them by the Senate. (13/5/2009, J.1942-6)

p. 367 paragraph 3, end

In 2008 the Community Affairs Committee was directed to hold “cross-portfolio” estimates hearings on indigenous affairs (26/8/2008, J.683).

p. 375 paragraph 5

temporary substitute members of committees: this procedure was put into standing order 25 in 2009 (10/3/2009, J.1657-8).

p. 383 paragraph 4

directions to committees: also 26/8/2008, J.683

p. 406 paragraphs 2-5

Questions to chairs of committees were abolished in 2009 (10/3/2009, J.1657-8).

CHAPTER 18

DOCUMENTS TABLED IN THE SENATE

p. 444 paragraph 5

reports by the Australian Competition and Consumer Commission in response to orders: 11/2/2009, J.1594

p. 444 after paragraph 5

An order passed on 25 June 2009 asked the Productivity Commission to produce a report on some aspects of the government’s Carbon Pollution Reduction Scheme legislation, and required that that report and information already in the possession of the Commission be produced (25/6/2009, J.2192-3).

CHAPTER 19

RELATIONS WITH THE EXECUTIVE GOVERNMENT

p. 469 after paragraph 4

The Senate passed on 13 May 2009 an order setting out the process to be followed by public sector witnesses who believe that they have grounds for withholding information from Senate committees. In essence, the order requires that witnesses state recognised public interest grounds for withholding information and, at the request of a committee or any senator, refer the matter to

the responsible minister, who is also required to state recognised public interest grounds for any claim to withhold the information (13/5/2009, J.1941-2).

p. 487 after paragraph 5

The persistence of ministers and officers in declining to answer questions at estimates hearings without properly raising recognised public interest grounds led to the resolution of the Senate of 13 May 2009 prescribing the process to be followed by public sector witnesses who believe they have grounds for withholding information (13/5/2009, J.1941-2, see above). Observation of the resolution was not achieved at the subsequent estimates hearings, indicating a lack of understanding of the principle involved, that claims to withhold information from Senate committees require a statement of public interest grounds that can be considered by the committee and the Senate.

p. 488 paragraph 1

For an example of questions in a committee about the content of legal advice, and answers provided, see Environment, Communications and the Arts Committee, estimates hearing, 23/2/2009, transcript, pp 149-52.

p. 488 after paragraph 1

The claim that documents could not be produced to a committee because they were not published, a vacuous claim, as committees would not be likely to seek information already published, was repudiated in a resolution passed in February 2009 (4/2/2009, J.1541-2).

p. 489 after paragraph 4

On 13 May 2009 government legislation to establish the National Broadband Network was postponed until the government produced information required by an order of the Senate (13/5/2009, J.1934; 25/6/2009, J.2194).

A resolution passed by the Senate on 17 June 2009 set out the history of attempts by the Select Committee on Fuel and Energy, supported by orders for documents passed by the Senate, to extract from the government information on computer modelling on climate change. A further resolution on 25 June 2009 declared the government contemptuous for failing to produce this information. This action coincided with the postponement of the government's Carbon Pollution Reduction Scheme legislation (17/6/2009, J.2090-2; 25/6/2009, J.2189).

pp 490 paragraph 3, ff

Question time: in November 2008 the Senate adopted, on a trial basis, new procedures for question time, involving a two-minute time limit on answers to primary questions, two supplementary questions allowed to the questioner, and a requirement for direct relevance in the answers (Procedure Committee, 3rd report of 2008, PP 500/2008; 13/11/2008, J.1206; 4/12/2008, J.1421).

p. 490 paragraph 3

Questions to chairs of committees and other senators who are not ministers were abolished in 2009 (10/3/2009, J.1657-8).

APPENDIX 3

COMMITTEE OF PRIVILEGES REPORTS

p. 648

REPORT	DATE MATTER REFERRED	REFERRED BY	DATE REPORT TABLED	FINDINGS/RECOMMENDATIONS	ACTION BY SENATE
Persons referred to in the Senate – certain persons on behalf of the Exclusive Brethren Christian Fellowship (No.135) PP No. 338/2008	17/09/2008	President	24/09/2008 (J.940)	Recommendation <ul style="list-style-type: none">▪ That the response by certain persons on behalf of the Exclusive Brethren be incorporated in <i>Hansard</i>	Report adopted 24/09/2008 (J.940)
Persons referred to in the Senate – Mr Barry Williams, President of the Lone Fathers Association of Australia Inc. (No. 136) PP No. 4/2009	3/02/2009	President	10/02/2009 (J.1579)	Recommendation <ul style="list-style-type: none">▪ That the response by Mr Barry Williams be incorporated in <i>Hansard</i>	Report adopted 10/2/2009 (J.1579)
Persons referred to in the Senate – Mr Anthony and Mrs Brenda Bird, members of the Exclusive Brethren (No. 137) PP No. 5/2009	17/09/2008	President	10/02/2009 (J.1579)	Recommendation <ul style="list-style-type: none">▪ That the response by Mr and Mrs Bird be incorporated in <i>Hansard</i>	Report adopted 10/2/2009 (J.1579)

APPENDIX 4
MATTERS OF PRIVILEGE RAISED AND RULINGS OF THE PRESIDENT

p. 656

DATE AND JOURNAL REFERENCE	SENATOR	SUBJECT	RULING RE DETERMINATION OF PRECEDENCE
23.6.2009 J.2161–62	Heffernan	Whether any adverse action was taken against Mr Godwin Grech in consequence of his evidence before the Economics Legislation Committee on 19 June 2009	Given
24.6.2009 J.2181	Ludwig	Whether false or misleading evidence was given to the Economics Legislation Committee on 19 June 2009 and whether there was any improper interference with the proceedings of the committee or misleading of the committee by use of a false document	Given, but motion to refer matter to committee rejected (25/6/2009, J.2194–95)

APPENDIX 5
PRIVATE SENATORS' BILLS WHICH HAVE PASSED THE SENATE SINCE 1901

p. 667

Urgent Relief for Single Age Pensioners Bill 2008

Introduced by: Senator Coonan
Date passed by Senate: 22 September 2008

Independent Reviewer of Terrorism Laws Bill 2008 [No. 2]

Introduced by: Senators Troeth and Humphries
Date passed by Senate: 13 November 2008

APPENDIX 6

LIST OF BILLS IN WHICH THE SENATE HAS MADE REQUESTS FOR AMENDMENTS AND RESULTS OF SUCH REQUESTS

p. 708

HRD page(s) on which Senate requests appear	Date	Title of Bill and Nature of Request	How Disposed Of
8404-8407	24.9.08	Tax Laws Amendment (Luxury Car Tax) Bill 2008 — One requested amendment to reduce the luxury car tax applicable to fuel-efficient cars; one requested amendment to provide for a four-year sunset clause in relation to the indexation method; one requested amendment to specify that the tax does not apply retrospectively to contracts entered into before 7.30pm on 13 May 2008; and one requested amendment to provide exemptions for primary producers and tourism operators from the tax	Requested amendments made
8698-8699	25.9.08	Excise Legislation Amendment (Condensate) Bill 2008 — One requested amendment to change the commencement clause; three requested amendments to provide for the determination of VOLWARE prices for condensate; three requested amendments to implement transitional arrangements for the setting of VOLWARE prices; one requested amendment to extend the period of grace applicable to licensed producers of condensate; and one requested amendment to provide a transitional period for licensing purposes	Requested amendments made
8700-8701	25.9.08	Excise Tariff Amendment (Condensate) Bill 2008 — One requested amendment to change the commencement clause; one requested amendment to remove condensate from the definition of relevant accumulation; and one requested amendment to extend the period of grace applicable to licensed producers of condensate	Requested amendments made

HRD page(s) on which Senate requests appear	Date	Title of Bill and Nature of Request	How Disposed Of
9487-9493	20.10.08	Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008 — Eight requested amendments to increase the number of individuals eligible to access the de facto property settlement and spouse maintenance regime; and 12 consequential requested amendments (both requests and amendments were made to this bill)	Requested amendments made
11050-11055	24.11.08	Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008 — Two requested amendments to increase the number of individuals eligible to access reversionary superannuation benefits (both requests and amendments were made to this bill)	Requested amendments made
11250-11259	25.11.08	Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Bill 2008 — Two requested amendments to increase the number of individuals eligible to access child support (both requests and amendments were made to this bill)	Requested amendments made
12690-12691	4.12.08	Road Charges Legislation Repeal and Amendment Bill 2008 — Eight requested amendments relating to the determination of the rate of road user charge; one requested amendment to specify that the road charge is not indexed by regulation; one requested amendment to provide that the road charge is determined only once each financial year; and one requested amendment to provide for a review of the Heavy Vehicle Safety and Productivity Program	Requested amendments made
12716-12717	4.12.08	Temporary Residents' Superannuation Legislation Amendment Bill 2008 — Three requested amendments to make interest payable by the Commissioner of Taxation for certain unclaimed superannuation	Requested amendments made
2911-2914	17.3.09	Customs Tariff Amendment (2009 Measures No. 1) Bill 2009 — 18 requested amendments to validate the customs duty collected on ‘alcopops’ between 27 April 2008 and royal assent	Requested amendments not made. Senate did not press requests. Bill rejected at 3 rd reading

HRD page(s) on which Senate requests appear	Date	Title of Bill and Nature of Request	How Disposed Of
2918	17.3.09	Excise Tariff Amendment (2009 Measures No. 1) Bill 2009 — Two requested amendments to validate the excise duty collected on ‘alcopops’ between 27 April 2008 and royal assent	Requested amendments not made. Senate did not press requests. Bill rejected at 3 rd reading
3960	14.5.09	Employment and Workplace Relations Amendment Bill 2008 — Three requested amendments to make death benefits retrospectively payable to dependent children in the event of a work-related death (both requests and amendments were made to this bill)	Requested amendments made

APPENDIX 7

CASUAL VACANCIES IN THE SENATE

p. 711

Senator	VACANCY Reason for Vacancy	Date	Senator	APPOINTMENT	
				How Appointed	Date
Ellison, C.M.	Resignation	30.01.09	Back, C.J.	WA Parliament	11.03.09

APPENDIX 9

SELECT COMMITTEES 1985–

p. 717

Senate Select Committees:

State Government Financial Management (Report – PP 336/2008)

Men’s Health (Report – PP 114/2009)

Climate Policy (Report – PP 116/2009)