

## **Procedural orders and resolutions of the Senate of continuing effect**

The following procedural orders and resolutions of the Senate are those which were clearly intended to be of continuing effect, and are significant in that they relate to the manner in which the Senate conducts its legislative and inquiry functions and exercises and upholds its constitutional powers.

The text of each order and resolution is followed by the date on which it was passed, the page number in the Journals of the Senate at which it appears and any necessary explanatory note.

The orders and resolutions have been grouped into 2 sections – procedural orders affecting the procedures of the Senate and resolutions expressing opinions of the Senate. Those orders and resolutions relating to similar subjects have been placed together.

The orders in this section were agreed to by the Senate up to 14 May 2009. Any orders agreed to by the Senate after that date, or any sessional or temporary orders that operate for a limited period, may be found in the Notice Paper under “Orders of the Senate”.



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# PROCEDURAL ORDERS OF CONTINUING EFFECT

## Legislation

### 1 Circulation of requests

The Senate requires that all amendments circulated in the Senate chamber in the form of requests be accompanied by a statement of reasons for their being framed as requests together with a statement by the Clerk of the Senate on whether the amendments would be regarded as requests under the precedents of the Senate.

*(26 June 2000 J.2899)*

## Committees

### 2 Disclosure of minority or dissenting reports

- (1) For the reasons, and bearing in mind the considerations, set out in paragraph (2), the Senate resolves and reaffirms that prior to the printing of a committee report a member or a group of members of the committee is not required to disclose to the committee any minority or dissenting report or any relevant conclusions and recommendations which the member or group of members proposes to add or attach to the report after it has been agreed to by the committee.
- (2) The reasons and considerations referred to in paragraph (1) are:
  - (a) the clear terms of standing order 38(2) which confers on committee members the right to add or attach minority or dissenting reports, conclusions or recommendations “after” the draft report has been agreed to by the committee;
  - (b) the conclusions of the Procedure Committee that committee members “are not obliged to disclose minority reports to other members” and have a “right not to disclose their minority reports” (First Report of 1995);
  - (c) the need to protect the integrity of the right of a minority group to dissent from the “agreed” report of a majority group; and
  - (d) the need to recognise that use of procedures, practices or guidelines designed in effect to make the majority report provisional until the minority report is seen and dissected by the majority group, completely undermines the right of a minority to express its dissent from the “agreed” report of a majority group.
- (3) This order is of continuing effect.

*(22 November 1995 J.4198)*

### **3 Unauthorised disclosure of committee proceedings, documents or evidence**

The Senate adopts the procedures, as outlined in the 20th report of the Committee of Privileges tabled on 21 December 1989, to be followed by committees in respect of matters on which such committees may wish action to be taken:

- (1) (a) a committee affected by any unauthorised disclosure of proceedings or documents of, or evidence before, that committee shall seek to discover the source of the disclosure, including by the chair of the committee writing to all members and staff asking them if they can explain the disclosure;
- (b) the committee concerned should come to a conclusion as to whether the disclosure had a tendency substantially to interfere with the work of the committee or of the Senate, or actually caused substantial interference;
- (c) if the committee concludes that there has been potential or actual substantial interference it shall report to the Senate and the matter may be raised with the President by the chair of the committee, in accordance with standing order 81.

- (2) Nothing in this resolution affects the right of a senator to raise a matter of privilege under standing order 81.
- (3) This order is of continuing effect.

*(20 June 1996 J.361)*

### **4 Unauthorised disclosure of committee proceedings**

- (1) The Senate confirms that any disclosure of evidence or documents submitted to a committee, of documents prepared by a committee, or of deliberations of a committee, without the approval of the committee or of the Senate, may be treated by the Senate as a contempt.
- (2) The Senate reaffirms its resolution of 20 June 1996, relating to procedures to be followed by committees in cases of unauthorised disclosure of committee proceedings.
- (3) The Senate provides the following guidelines to be observed by committees in applying that resolution, and declares that the Senate will observe the guidelines in determining whether to refer a matter to the Committee of Privileges:
  1. Unless there are particular circumstances involving actual or potential substantial interference with the work of a committee or of the Senate, the following kinds of unauthorised disclosure should not be raised as matters of privilege:
    - (a) disclosure of a committee report in the time between the substantial conclusion of the committee's deliberations on the report and its presentation to the Senate;

- (b) disclosure of other documents prepared by a committee and not published by the committee, where the committee would have published them, or could appropriately have published them, in any event, or where they contain only research or publicly-available material, or where their disclosure is otherwise inconsequential;
- (c) disclosure of documents and evidence submitted to a committee and not published by the committee, where the committee would have published them, or could appropriately have published them, in any event;
- (d) disclosure of private deliberations of a committee where the freedom of the committee to deliberate is unlikely to be significantly affected.

2. The following kinds of unauthorised disclosure are those for which the contempt jurisdiction of the Senate should primarily be reserved, and which should therefore be raised as matters of privilege:

- (a) disclosure of documents or evidence submitted to a committee where the committee has deliberately decided to treat the documents or evidence as in camera material, for the protection of witnesses or others, or because disclosure would otherwise be harmful to the public interest;
- (b) disclosure of documents prepared by a committee where that involves disclosure of material of the kind specified in paragraph (a);
- (c) disclosure of private deliberations of a committee where that involves disclosure of that kind of material, or significantly impedes the committee's freedom to deliberate.

3. An unauthorised disclosure not falling into the categories in guidelines 1 and 2 should not be raised as a matter of privilege unless it involves actual or potential substantial interference with the work of a committee or of the Senate.

4. When considering any unauthorised disclosure of material in the possession of a committee, the committee should consider whether there was any substantive reason for not publishing that material.

(4) Before deciding to raise a matter of privilege involving possible unauthorised disclosure of committee proceedings, any committee may seek the guidance of the Committee of Privileges as to whether a matter should be pursued. If the committee decides that such a matter should be raised, it must consult with the Committee of Privileges before taking the matter further.

(5) When applying this resolution a committee shall have regard to the matters set out in paragraphs 3.43 to 3.59 of the 122nd Report of the Committee of Privileges, June 2005.

(17 September 2007 J.4388)

*Note: Sessional order agreed to on 6 October 2005 J.1201.*

## **5 Joint committee documents – disclosure**

The disclosure of evidence or documents of joint committees is authorised by the President of the Senate and the Speaker of the House of Representatives under the same conditions as are provided in standing order 37.

*(6 September 1984 J.1086)*

*Note: Adopted by the Senate on 6 September 1984. Concurred with by the House of Representatives in relation to joint committees on 11 October 1984, message reported in the Senate on 16 October 1984.*

## **6 Witnesses' expenses**

In relation to the payment of witnesses' expenses, if departments, or any other bodies, pay the expenses of other witnesses, this fact should be made known to the committees concerned, so that the committees are not misled as to the position of the witnesses and the status of their evidence.

*(29 April 1999 J.815)*

## **7 Reference of Tax Expenditures Statement to committees considering estimates**

The annual Tax Expenditures Statement stands referred to legislative and general purpose standing committees for consideration by the committees during their examination of the estimates of government expenditure under standing order 26.

*(11 May 2004 J.3377, amended 14 August 2006: with effect from 11 September 2006 J.2481)*

# **Accountability**

## **8 Public interest immunity claims**

That the Senate—

- (a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;
- (b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;
- (c) orders that the following operate as an order of continuing effect:
  - (1) If:
    - (a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and
    - (b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee,

the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

- (2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.
- (3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.
- (4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.
- (5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.
- (6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.
- (7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).
- (8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(d) requires the Procedure Committee to review the operation of this order and report to the Senate by 20 August 2009.

*(13 May 2009 J.1941)*

## **9 Senate and Senate committees – claims of commercial confidentiality**

The Senate and Senate committees shall not entertain any claim to withhold information from the Senate or a committee on the grounds that it is commercial-in-confidence, unless the claim is made by a minister and is accompanied by a statement setting out the basis for the claim, including a statement of any commercial harm that may result from the disclosure of the information.

*(30 October 2003 J.2654)*

## **Orders for documents**

### **10 Indexed lists of departmental and agency files**

- (1) There be laid on the table, by each minister in the Senate, in respect of each department or agency administered by that minister, or by a minister in the House of Representatives represented by that minister, by not later than the tenth day of the spring and autumn sittings, a letter of advice that an indexed list of the titles of all relevant files, including new parts of existing files, created in the preceding six months commencing on 1 January and on 1 July, respectively, has been placed on the Internet.
- (2) Each department and agency shall provide, on its Internet home page, access to an indexed list of the titles of all relevant files, including new parts of existing files, created from 1 January 1998 in the central office of that department or agency (departments and agencies may choose to maintain online an indexed list of all new files created from that date or to maintain online an indexed list of, as a minimum, the most recent year's file creations).
- (3) For the purposes of this resolution:

**“autumn sittings”** means the period of sittings of the Senate first commencing on a day after 1 January in any year;

**“indexed list”** means a list in which file titles may be grouped by classifications used internally within departments or agencies, such as “policy”, “legislation”, “advisings”, etc.

**“relevant files”** includes files relating to the policy advising functions of the department or agency, including any relating to the development of legislation and other matters of public administration, but need not include:

- (a) files transferred to the Australian Archives;
- (b) case related files (e.g., personal representations or dealing with the personal affairs of departmental or agency clients or taxpayers); and
- (c) files essentially related to the internal administration of the department or agency (e.g., staff or personnel matters);

**“spring sittings”** means the period of sittings of the Senate first commencing on a day after 31 July in any year; and

“**title**” means the name or title of the file, excluding any part of that name or title which would necessarily disclose commercially confidential, identifiably personal or national security matters.

(4) This order is of continuing effect.

*(30 May 1996 J.279, amended 3 December 1998 J.265)*

## **11 Departmental and agency contracts**

(1) There be laid on the table, by each minister in the Senate, in respect of each agency administered by that minister, or by a minister in the House of Representatives represented by that minister, by not later than 2 calendar months after the last day of the financial and calendar year, a letter of advice that a list of contracts in accordance with paragraph (2) has been placed on the Internet, with access to the list through the department’s or agency’s home page.

(2) The list of contracts referred to in paragraph (1) indicate:

- (a) each contract entered into by the agency which has not been fully performed or which has been entered into during the previous 12 months, and which provides for a consideration to the value of \$100 000 or more;
- (b) the contractor, the amount of the consideration and the subject matter of each such contract, the commencement date of the contract, the duration of the contract, the relevant reporting period and the twelve-month period relating to the contract listings;
- (c) whether each such contract contains provisions requiring the parties to maintain confidentiality of any of its provisions, or whether there are any other requirements of confidentiality, and a statement of the reasons for the confidentiality; and
- (d) an estimate of the cost of complying with this order and a statement of the method used to make the estimate.

(3) If a list under paragraph (1) does not fully comply with the requirements of paragraph (2), the letter under paragraph (1) indicate the extent of, and reasons for, non-compliance, and when full compliance is expected to be achieved. Examples of non-compliance may include:

- (a) the list is not up to date;
- (b) not all relevant agencies are included; and
- (c) contracts all of which are confidential are not included.

(4) Where no contracts have been entered into by a department or agency, the letter under paragraph (1) is to advise accordingly.

- (5) In respect of contracts identified as containing provisions of the kind referred to in paragraph (2)(c), the Auditor-General be requested to provide to the Senate, by not later than 30 September each year, a report indicating that the Auditor-General has examined a number of such contracts selected by the Auditor-General, and indicating whether any inappropriate use of such provisions was detected in that examination.
- (6) In respect of letters including matter under paragraph (3), the Auditor-General be requested to indicate in a report under paragraph (5) that the Auditor-General has examined a number of contracts, selected by the Auditor-General, which have not been included in a list, and to indicate whether the contracts should be listed.
- (7) The Finance and Public Administration Committee consider the ongoing operation of the order and report on relevant developments from time to time.
- (8) This order has effect on and after 1 July 2001.
- (9) In this order:

“**agency**” means an agency within the meaning of the *Financial Management and Accountability Act 1997*; and

“**previous 12 months**” means the period of 12 months ending on either 31 December or 30 June in any year, as the case may be.

(20 June 2001 J.4358, amended 27 September 2001 J.4994, 18 June 2003 J.1881, 26 June 2003 J.2011, 4 December 2003 J.2851, 1 March 2007 J.3527)

## 12 Agency advertising and public information projects

- (1) There be laid on the table, by each minister in the Senate, in respect of each agency administered by that minister, or by a minister in the House of Representatives represented by that minister, a statement in accordance with the succeeding provisions of this order.
- (2) A statement be tabled in respect of each advertising or public information project undertaken by each agency where the cost of the project is estimated or contracted to be \$100 000 or more.
- (3) A statement be tabled within 5 sitting days of the Senate after the project is approved. If the Senate is not sitting when a statement is ready for presentation, the statement be presented to the President under standing order 166.
- (4) A statement indicate:
  - (a) the purpose and nature of the project;
  - (b) the intended recipients of the information to be communicated by the project;
  - (c) who authorised the project;
  - (d) the manner in which the project is to be carried out;
  - (e) who is to carry out the project;

- (f) whether the project is to be carried out under a contract;
- (g) whether such contract was let by tender;
- (h) the estimated or contracted cost of the project;
- (i) whether every part of the project conforms with the Audit and JCPAA guidelines; and
- (j) if the project in any part does not conform with those guidelines, the extent of, and reasons for, the nonconformity.

(5) In this order, “**Audit and JCPAA guidelines**” means the guidelines set out in Report No. 12 of 1998-99 of the Auditor-General, entitled *Taxation Reform: community education and information programme*, and Report No. 377 of the Joint Committee of Public Accounts and Audit, entitled *Guidelines for Government Advertising*, respectively.

(29 October 2003 J.2641)

## **13 Departmental and agency appointments and vacancies**

That—

- (1) There be laid on the table, by each minister in the Senate, in respect of each department or agency administered by that minister, or by a minister in the House of Representatives represented by that minister, by not later than 7 days before the commencement of the budget estimates, supplementary budget estimates and additional estimates hearings:
  - (a) a list of all appointments made by the Government (through Executive Council, Cabinet and ministers) to statutory authorities, executive agencies, advisory boards, government business enterprises and all other Commonwealth bodies including the term of the appointment and remuneration for the position and the place of permanent residence by state or territory of the appointee; and
  - (b) a list of existing vacancies to be filled by government appointment to statutory authorities, executive agencies, advisory boards, government business enterprises and all other Commonwealth bodies.
- (2) If the Senate is not sitting when a statement is ready for presentation, the statement is to be presented to the President under standing order 166.
- (3) This order is of continuing effect.

(24 June 2008 J.589, amended 12 May 2009 J.1880)

## **14 Departmental and agency grants**

That—

- (1) There be laid on the table, by each minister in the Senate, in respect of each department or agency administered by that minister, or by a minister in the House of Representatives represented by that minister, by not later than 7 days before the commencement of the budget estimates, supplementary budget estimates and additional estimates hearings:

A list of all grants approved in each portfolio or agency, including the value of the grant, recipient of the grant and the program from which the grant was made.

- (2) If the Senate is not sitting when a statement is ready for presentation, the statement is to be presented to the President under standing order 166.
- (3) This order is of continuing effect.

*(24 June 2008 J.590)*

## **15 Family and Community Services – Housing Assistance agreements**

- (1) That the Senate:
  - (a) notes that the Housing Assistance (Form of Agreement) Determination 2003 in Schedule 1, subsections 4(33) to 4(36) requires states to report on expenditure and progress towards their respective bilateral agreements to the Commonwealth within 6 months after the end of each grant year;
  - (b) orders that there be laid on the table, no later than 3.30 pm on 12 May 2005, all reports provided by the states and territories to the Commonwealth under those provisions for the financial year 2003-04; and
  - (c) orders that all reports provided by the states and territories to the Commonwealth under those provisions be tabled in the Senate within 5 sitting days, or one calendar month, after receipt (whichever is the later), and that the Senate be notified in writing by the Minister for Family and Community Services within 5 sitting days of the expiration of the 6 months if reports have not been provided within the required 6 months.
- (2) That this order is of continuing effect.

*(12 May 2005 J.626)*

## **16 Shipping Grants Legislation Bill 1996**

There be laid on the table of the Senate, on or before the final sitting day of each calendar year, a report setting out developments and progress in relation to the matters raised in paragraphs (a) and (b) of the resolution of the Senate of 29 November 1996.

*Paragraphs (a) and (b) of the resolution are as follows:*

The Senate:

- (a) calls on the government to pursue multilateral agreements in all possible international fora to:
  - (i) ensure that there are international standards for conditions, treatment, receipt of pay, and occupational safety adequate to protect the human rights of seafarers,

- (ii) ensure that there are international standards for safety, including minimum levels of crew actively present and attentive on the deck or bridge, and
- (iii) actively support, propose and lobby for agreements by other nations that nations have a duty to inspect ships and enforce compliance with such international standards;

(b) calls on the government to pursue multilateral agreements in all possible international fora to include in an international comprehensive liability regime:

- (i) compensation for environmental harm, and non-economic loss from marine-based pollution, and
- (ii) compensation for any efforts that need to be taken in defence of the rights of seafarers, including legal costs and the costs of repatriation.

*(Agreed to 29 November 1996 J.1161)*

*Note: Agreed to by means of an amendment to the motion that the Shipping Grants Legislation Bill 1996 be read a second time.*

**17 Health – Assessment reports by the Australian Competition and Consumer Commission**

There be laid on the table as soon as practicable after the end of each period of 12 months ending on or after 30 June 2003, a report by the Australian Competition and Consumer Commission containing an assessment of any anti-competitive or other practices by health funds or providers which reduce the extent of health cover for consumers and increase their out-of-pocket medical and other expenses.

*(Agreed to 25 March 1999 J.626)*

*Note: Agreed to by means of an amendment to the motion that the report of the committee on the Health Legislation Amendment Bill (No. 2) 1999 be adopted, amended 18 September 2002 J.761.*

**18 Defence – Review of materiel acquisition projects – Report by the Auditor-General**

That the Senate request the Auditor-General:

- (a) to produce, on an annual basis, a report on progress in major defence projects, detailing cost, time and technical performance data for each project;
- (b) to model the report on that ordered by the British House of Commons and produced by the United Kingdom Comptroller and Auditor General; and
- (c) to include in the report such analysis of performance and emerging trends as will enable the Parliament to have high visibility of all current and pending major projects.

*(14 May 2003 J.1799)*

*Note: Part of a longer resolution adopting recommendations of the Foreign Affairs, Defence and Trade References Committee report on materiel acquisition and management in Defence.*

## Senate chamber

### 19 Australian flag

The Senate—

- (a) agrees to furnish the chamber with an Australian flag which is in keeping with the proportions and architecture of the chamber;
- (b) notes that this would:
  - (i) give a permanent outward sign of the allegiance which we all owe to the nation of Australia,
  - (ii) show respect for the commitment Australian men and women have demonstrated to the Australian flag throughout the history of Australia in times of peace and war, and now as the unifying symbol for our sports people in the international arena, and
  - (iii) demonstrate that the Senate is proud to display the Australian flag; and
- (c) directs that the flag be installed within 3 weeks after the passage of this resolution.

*(8 October 1992 J.2861)*

### 20 Seating

- (1) The President shall provide chairs on the floor of the chamber in front of the broadcasting booth as a gallery for visiting members of the House of Representatives.
- (2) The President shall request the Speaker of the House of Representatives to provide similar seating in the House of Representatives chamber for senators.
- (3) This order has effect notwithstanding anything contained in the standing orders and is of continuing effect.

*(18 May 1993 J.164)*

### 21 Media representatives and advisers – dress code

The Senate does not require media representatives in the Senate gallery, or senators' advisers, to wear coats.

*(20 March 2002 J.244)*

### 22 Photographs

Photographs of any senator may be taken by the media in the chamber whenever that senator has the call.

*(21 March 2002 J.269)*

## Questions

### 23 Disallowed questions

- (1) In accordance with the recommendation contained in the Procedure Committee's second report of 1994, the terms of disallowed questions are to be shown in Hansard.
- (2) This order has effect from 7 February 1995 and is of continuing effect.

*(6 February 1995 J.2885)*

## Parliamentary secretaries

### 24 Powers

- (1) Any senator appointed a parliamentary secretary under the *Ministers of State Act 1952* may exercise the powers and perform the functions conferred upon ministers by the procedures of the Senate, but may not be asked or answer questions which may be put to ministers under standing order 72(1) or represent a Senate minister in relation to that minister's responsibilities before a legislative and general purpose standing committee considering estimates.
- (2) This order is of continuing effect.

*(6 May 1993 J.100, amended 24 August 1994 J.2054, 1 May 1996 J.64, 11 November 1998 J.54, 4 April 2000 J.2525, 6 February 2001: with effect from 1 January 2002 J.3860, 14 August 2006: with effect from 11 September 2006 J.2481)*

# RESOLUTIONS EXPRESSING OPINIONS OF THE SENATE

## Parliament

### 25 Parliamentary appropriations

The committee, having considered the report of Estimates Committee A, recommends that—

- (a) the provisions of the resolution of the Senate dated 25 March 1982, relating to the responsibilities of the Standing Committee on Appropriations and Staffing with respect to the estimates for the Senate, are reaffirmed;
- (b) the estimates of expenditure for the Senate to be included in the Appropriation (Parliamentary Departments) Bill shall continue to be those determined by the Standing Committee on Appropriations and Staffing;
- (c) if before the introduction of the bill the Minister for Finance should, for any reason, wish to vary the details of the estimates determined by the committee the minister should consult with the President of the Senate with a view to obtaining the agreement of the committee to any variation;
- (d) in the event of agreement not being reached between the President and the minister, then the Leader of the Government in the Senate, as a member of the Appropriations and Staffing Committee, be consulted;
- (e) the Senate acknowledges that in considering any request from the Minister for Finance the committee and the Senate would take into consideration the relevant expenditure and staffing policies of the government of the day; and
- (f) in turn the Senate expects the government of the day to take into consideration the role and responsibilities of the Senate which are not of the executive government and which may at times involve conflict with the executive government.

(2 December 1985 J.676)

*Note: Resolution of a committee of the whole, adopted by the Senate on 2 December 1985. The resolution of 25 March 1982 appointed the Standing Committee on Appropriations and Staffing with the responsibility, inter alia, of determining appropriations for the Senate.*

### 26 Parliamentary appropriations

The committee, having considered the Eleventh Report of the Standing Committee on Appropriations and Staffing—

- (a) reaffirms the resolution of 2 December 1985 concerning the determination of the estimates of expenditure for the Senate to be included in the Appropriation (Parliamentary Departments) Bill;
- (b) requires the Minister for Finance to process the Senate department's estimates as early as practicable to enable any differences between the minister and the committee to be resolved in accordance with the resolution; and

(c) expects that the resolution will be adhered to in determining those estimates in the future.

(30 November 1988 J.1214)

*Note: Resolution of a committee of the whole, adopted by the Senate on 30 November 1988.*

## **27 Parliamentary appropriations**

The committee, having considered the report of Estimates Committee A, recommends—

That the Senate reaffirms the resolution of 2 December 1985 relating to the determination of appropriations for the Senate, and calls upon the President, the Leader of the Government in the Senate and the Minister for Finance to observe and comply with the procedures set out in that resolution.

(29 November 1989 J.2273)

*Note: Resolution of a committee of the whole, adopted by the Senate on 29 November 1989.*

## **28 Parliamentary departments – structure and responsibilities**

The Senate declares that no changes in the structure or responsibilities of the parliamentary departments should be made until—

- (a) particulars of proposed changes have been provided to all senators;
- (b) the Standing Committee on Appropriations and Staffing has examined the proposed changes and reported to the Senate; and
- (c) the Senate has approved of the changes.

(3 June 1987 J.1951)

## **29 Administration of parliamentary security**

That the President direct, for his part, that any advice on security matters affecting senators, Parliament House and the parliamentary precincts tendered by the Secretary or another officer of DPS shall be co-signed by the Usher of the Black Rod or another officer of the Department of the Senate nominated by the Clerk, and, unless it is so co-signed, it shall not constitute satisfactory advice to the President.

(16 June 2004 J.3480)

*Note: Part of a longer resolution adopting and endorsing the Appropriations and Staffing Committee's 40th report.*

## **30 Security funding**

The Senate:

- (a) notes the transfer of \$1 million from the Department of the Senate to the Department of Parliamentary Services as a special contribution to security costs in the parliamentary precincts over and above the transferred funds previously provided for security; and

- (b) agrees that, if any further funds are necessary to provide additional security costs, they be made by additional appropriation to, or savings within, the Department of Parliamentary Services.

*(8 December 2004 J.273)*

### **31 Appropriation bills – payments to international organisations**

The Senate is of the view that:

- (a) an initial payment to an international organisation in effect represents a new policy decision and therefore should be Appropriation Bill (No. 2); and
- (b) subsequent payments represent a continuing government activity of supporting the international organisation and therefore represents an ordinary annual service and should be in Appropriation Bill (No. 1).

*(8 December 2004 J.273)*

### **Privilege**

On 25 February 1988 the Senate passed 11 resolutions, setting out procedures and making declarations in relation to matters of parliamentary privilege. These resolutions are in a separate section of this volume.

### **32 Witnesses – powers of the Senate**

- (1) The Senate affirms that it possesses the powers and privileges of the House of Commons as conferred by section 49 of the Constitution and has the power to summon persons to answer questions and produce documents, files and papers.
- (2) Subject to the determination of all just and proper claims of privilege which may be made by persons summoned, it is the obligation of all such persons to answer questions and produce documents.
- (3) The fact that a person summoned is an officer of the Public Service, or that a question related to his departmental duties, or that a file is a departmental one does not, of itself, excuse or preclude an officer from answering the question or from producing the file or part of a file.
- (4) Upon a claim of privilege based on an established ground being made to any question or to the production of any documents, the Senate shall consider and determine each such claim.

*(16 July 1975 J.831)*

### **33 Detention of senators**

The Senate, having considered the Fifth Report of the Committee of Privileges, resolves that—

- (1) It is the right of the Senate to receive notification of the detention of its members.

- (2) Should a senator for any reason be held in custody pursuant to the order or judgment of any court, other than a court martial, the court ought to notify the President of the Senate, in writing, of the fact and the cause of the senator's being placed in custody.
- (3) Should a senator be ordered to be held in custody by any court martial or officer of the Defence Force, the President of the Senate ought to be notified by His Excellency the Governor-General of the fact and the cause of the senator's being placed in custody.
- (4) The Presiding Officers of the Parliament should confer with the Presiding Officers of the Parliaments of the states, and the Attorney-General should confer with the Attorneys-General of the states, upon the action to be taken to secure compliance with the foregoing resolutions.
- (5) The terms of these resolutions be communicated to Presiding Officers of the Parliaments of the states and the Attorneys-General of the states.

(26 February 1980 J.1153)

### **34 Detention of senators**

- (1) The Senate reaffirms its resolutions of 26 February 1980, as follows:
  - (a) It is the right of the Senate to receive notification of the detention of its members.
  - (b) Should a senator for any reason be held in custody pursuant to the order or judgment of any court, other than a court martial, the court ought to notify the President of the Senate, in writing, of the fact and the cause of the senator's being placed in custody.
  - (c) Should a senator be ordered to be held in custody by any court martial or officer of the Defence Force, the President of the Senate ought to be notified by His Excellency the Governor-General of the fact and the cause of the senator's being placed in custody.
- (2) Where a senator is arrested, and the identity of the senator is known to the arresting police, the police ought to notify the President of the Senate of the fact and the cause of the senator's arrest.

(18 March 1987 J.1693)

### **35 Interference with witnesses**

The Senate—

- (a) reaffirms the long-established principle that it is a serious contempt for any person to attempt to deter or hinder any witness from giving evidence before the Senate or a Senate committee, or to improperly influence a witness in respect of such evidence; and
- (b) warns all persons against taking any action which might amount to attempting to improperly influence a witness in respect of such evidence.

(13 September 1984 J.1129)

*Note: See also the Privilege Resolutions, 25 February 1988, no. 6, paragraphs (10) and (11).*

## **36 Meetings after dissolution of House of Representatives**

The Senate declares that where the Senate, or a committee of the Senate which is empowered to do so, meets following a dissolution of the House of Representatives and prior to the next meeting of that House, the powers, privileges and immunities of the Senate, of its members and of its committees, as provided by section 49 of the Constitution, are in force in respect of such meeting and all proceedings thereof.

*(22 October 1984 J.1276)*

### **Senate**

## **37 Appropriations – ordinary annual services of the government**

The Senate resolves:

- (1) To reaffirm its constitutional right to amend proposed laws appropriating revenue or moneys for expenditure on all matters not involving the ordinary annual services of the government.
- (2) That appropriations for expenditure on:
  - (a) the construction of public works and buildings;
  - (b) the acquisition of sites and buildings;
  - (c) items of plant and equipment which are clearly definable as capital expenditure;
  - (d) grants to the states under section 96 of the Constitution; and
  - (e) new policies not previously authorised by special legislation,

are not appropriations for the ordinary annual services of the government and that proposed laws for the appropriation of revenue or moneys for expenditure on the said matters shall be presented to the Senate in a separate appropriation bill subject to amendment by the Senate.

*(17 February 1977 J.572)*

## **38 Casual vacancies**

Where the place of a senator who is a member of a particular political party becomes vacant before the expiration of the senator's term of service, in the opinion of the Senate a person chosen to fill the vacant place in accordance with section 15 of the Constitution should be the member of the political party duly nominated by that party to fill that place; ...

*(19 March 1987 J.1698)*

*Note: Part of a longer resolution, dealing with the case of a vacancy in the representation of Tasmania.*

## 39 Casual vacancies

The Senate—

- (a) believes that casual vacancies in the Senate should be filled as expeditiously as possible, so that no state is without its full representation in the Senate for any time longer than is necessary;
- (b) recognises that under section 15 of the Constitution an appointment to a vacancy in the Senate may be delayed because the Houses of the Parliament of the relevant state are adjourned but have not been prorogued, which, on a strict construction of the section, prevents the Governor of the state making the appointment; and
- (c) recommends that all state parliaments adopt procedures whereby their Houses, if they are adjourned when a casual vacancy in the Senate is notified, are recalled to fill the vacancy, and whereby the vacancy is filled:
  - (i) within 14 days after the notification of the vacancy, or
  - (ii) where under section 15 of the Constitution the vacancy must be filled by a member of a political party, within 14 days after the nomination by that party is received,

whichever is the later.

*(3 June 1992 J.2401, reaffirmed 7 May 1997 J.1866)*

## 40 Taxation bills – retrospectivity

Where the government has announced, by press release, its intention to introduce a bill to amend taxation law, and that bill has not been introduced into the Parliament or made available by way of publication of a draft bill within 6 calendar months after the date of that announcement, the Senate shall, subject to any further resolution, amend the bill to provide that the commencement date of the bill shall be a date that is no earlier than either the date of introduction of the bill into the Parliament or the date of publication of the draft bill.

*(8 November 1988 J.1104)*

*Note: Part of a resolution agreed to by way of an amendment to the motion for the second reading of a bill.*

## 41 Quorum

The Senate ...

- (d) notes that it is the clear responsibility of all senators to maintain the quorum in the Senate.

*(4 October 1989 J.2083)*

*Note: Part of a longer resolution relating to a count-out of the Senate and a motion of censure.*

## **42 Committee reports – government responses**

- (1) The Senate declares its opinion that, following the presentation of a report from a standing committee or select committee of the Senate which recommends action by the government, the government should, within the ensuing 3 months, table a paper informing the Senate of its observations and intentions with respect to such recommendations.
- (2) The Senate resolves that the President communicate this resolution to the government with a request that the foregoing procedure apply, from the date of the passing of this resolution, to reports already presented during the present session and, in respect of future reports, from the date of presentation of a report.
- (3) A government response to a committee report under this resolution shall respond to any minority or dissenting report and any matter added to the report by any member or participating member of the committee.

*(14 March 1973 J.51, amended 24 August 1994 J.2054)*

*Note: Government responses to committee reports have since been the subject of undertakings by governments. Undertakings were given on:*

*26 May 1978 – Senate Debates (Hansard) p. 1933.  
24 August 1983 – Senate Debates (Hansard) p. 141.  
5 November 1991 – Journals p. 1625.*

## **43 Division of bills**

The committee ... reasserts the principle that the division of any bill by the Senate is a form of amendment of a bill, not different in principle from any other form of amendment, and should be considered as such.

*(12 December 2002 J.1363)*

*Note: Resolution of a committee of the whole, adopted by the Senate on 12 December 2002 following consideration of a message from the House of Representatives relating to the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002.*

## **44 Joint meetings to receive addresses by foreign heads of state**

The Senate considers that any future parliamentary addresses by visiting foreign heads of state should be received by a meeting of the House of Representatives in the House chamber, to which all senators are invited as guests.

*(11 May 2004 J.3377)*

*Note: Agreed to upon adoption of the Procedure Committee's third report of 2003.*

## **45 Storage of Senate documents**

The Senate authorises the storage outside Parliament House by the National Archives of Australia of documents laid before the Senate, provided that the storage of those documents is under the control of the Department of the Senate and microfilm copies of them are available within Parliament House.

*(6 October 2005 J.1200)*

## Accountability

### 46 Statutory authorities

The committee is of the opinion that, unless the Parliament has expressly provided otherwise, there is no area of expenditure of public funds by statutory authorities which cannot be examined by Parliament or its committees, and in this regard confirms the opinion expressed in the report to the Senate by Estimates Committee B, viz.: “The committee is of the opinion that whilst it may be argued that these bodies are not accountable through the responsible minister of state to Parliament for day-to-day operations, statutory corporations may be called to account by Parliament itself at any time and that there are no areas of expenditure of public funds where these corporations have a discretion to withhold details or explanations from Parliament or its committees unless the Parliament has expressly provided otherwise.”.

(9 December 1971 J.846)

*Note: Resolution of a committee of the whole agreed to on 2 December 1971, adopted by the Senate on 9 December 1971.*

### 47 Statutory authorities

The Senate reaffirms the principle expressed in the resolution agreed to in committee of the whole on 2 December 1971 and adopted by the Senate on 9 December 1971, viz.: “That whilst it may be argued that statutory authorities are not accountable through the responsible minister of state to Parliament for day-to-day operations, they may be called to account by Parliament itself at any time and that there are no areas of expenditure of public funds where these corporations have a discretion to withhold details or explanations from Parliament or its committees unless the Parliament has expressly provided otherwise.”.

(23 October 1974 J.283)

### 48 Statutory authorities

The committee, having considered the report of Estimates Committee B, ... recommends ...

- (ii) that the principle, espoused by the Senate in 1971 and 1974, that there are no areas of expenditure of public funds where statutory authorities have a discretion to withhold details or explanations from Parliament or its committees unless the Parliament has expressly provided otherwise, be reaffirmed;
- (iii) the affirmation, in accordance with this principle, that the right to privacy of individual counsel accepting a brief on behalf of the Commonwealth for which money is appropriated by Parliament is supervened by such acceptance, subject to the reasons for the information being clearly defined and to the proviso that injudicious or unwarranted invasion of privacy is not the intention of the Parliament or its committees; and ...

(18 September 1980 J.1563)

*Note: Resolution of a committee of the whole, adopted by the Senate on 18 September 1980. Part of a longer resolution dealing also with other matters.*

## **49 Statutory authorities**

The committee, having considered the reports of Estimates Committees, recommends—

- (a) that the Senate again reaffirm the principle – first adopted by the Senate following consideration of the report by Estimates Committee B in 1971, and reaffirmed in 1974:

“That whilst it may be argued that statutory authorities are not accountable through the responsible minister of state to Parliament for day-to-day operations, they may be called to account by Parliament itself at any time and that there are no areas of expenditure of public funds where these corporations have a discretion to withhold details or explanations from Parliament or its committees unless the Parliament has expressly provided otherwise.” ...

(4 June 1984 J.902)

*Note: Resolution of a committee of the whole, adopted by the Senate on 4 June 1984. Part of a longer resolution dealing also with other matters. The above principle was again reaffirmed by the Senate on 29 May 1997 J.2042.*

## **50 Public funds**

The Senate reaffirms the principle, stated previously in resolutions of 9 December 1971, 23 October 1974, 18 September 1980, 4 June 1984 and 29 May 1997, that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the Parliament or its committees unless the Parliament has expressly provided otherwise.

(25 June 1998 J.4075)

*Note: Part of a longer resolution agreed to by means of an amendment to the motion that the Stevedoring Levy (Collection) Bill 1998 and the Stevedoring Levy (Imposition) Bill 1998 be read a second time.*

## **51 Australian Broadcasting Corporation**

The Senate ...

- (a) agrees with the committee’s conclusion that the Australian Broadcasting Corporation’s (ABC) approach to the committee’s inquiry was incorrect and that the ABC and any summoned officers of the ABC should have answered the committee’s questions;
- (b) asserts that the ABC and any other witnesses before Senate committees have an obligation to co-operate and to answer questions within the terms of reference of Senate standing committees and Senate estimates committees alike; ...

(19 November 1986 J.1424)

*Note: Part of a longer resolution taking note of a report by the Standing Committee on Education and the Arts.*

## 52 Public servants

The Senate is of the opinion that all heads of departments and other agencies, statutory office holders and Senior Executive Service officers should be required, as part of their duties, to undertake study of the principles governing the operation of Parliament, and the accountability of their departments, agencies and authorities to the Houses of Parliament and their committees, with particular reference to the rights and responsibilities of, and protection afforded to, witnesses before parliamentary committees.

(21 October 1993 J.684, reaffirmed 1 December 1998 with adoption of Committee of Privileges 73rd report, paragraph 2.42, J.226)

## Miscellaneous

### 53 Australian Bureau of Statistics surveys

...(b) The committee is of the opinion that the government should not in the future proceed with any ABS survey unless—

- (i) where the survey is significantly different from surveys conducted prior to July 1988, the proposed survey and the proposed terms of conduct of the survey are tabled in Parliament and the parliamentary debate on the proposed survey is fully taken into account, and
- (ii) the proposed survey is not extraordinarily burdensome and intrusive towards those members of the Australian public selected for inclusion in the survey.

(2 December 1988 J.1233)

*Note: Resolution of a committee of the whole, adopted by the Senate on 2 December 1988. Part of a longer resolution dealing with a particular statistical survey conducted by the Australian Bureau of Statistics.*

### 54 Voluntary voting

The Senate is of the view that having regard to the fact that the system of voluntary voting provided for in the Constitutional Convention (Election) Bill 1997 is for the election of delegates to a specific Constitutional Convention for a limited and temporary purpose in special circumstances, the system should not be seen as a precedent for elections of members of Parliament or for any other ballots including referendums.

(28 August 1997 J.2354)

*Note: Resolution agreed to as a consequence of an amendment to the question that the report of the committee on message no. 347 from the House of Representatives relating to the Constitutional Convention (Election) Bill 1997 be adopted.*

