

## Clerk's Office

### Outputs

Provision of sound and timely advice on proceedings of the Senate and its committees and provision of leadership and strategic direction for the department.

Provision of secretariat and advisory support to the Procedure Committee, the Committee of Privileges and the Committee of Senators' Interests.

Provision of procedural information and related services to senators and the Senate department.

Performance indicators	Performance results
Advice and support are provided to the satisfaction of the President, other office-holders, Senate committees and senators so that they are able to fulfil their roles.	The 2011 senators' survey reported high levels of satisfaction with the advice on powers, privileges and proceedings (100% satisfied or very satisfied) and no dissatisfaction.
Advice, documentation, publications and draft reports are accurate, of a high standard and produced to meet the required timeframes.	All advice, documents, publications and draft reports were of a high standard and met required timeframes; none were shown to be inaccurate.
<i>Odgers' Australian Senate Practice</i> is updated each six months and a new printed edition is produced regularly. The <i>Procedural Information Bulletin</i> is produced two days after the end of sitting fortnights and other procedural resources are updated and augmented as required.	Two supplements to the 12th edition of <i>Odgers' Australian Senate Practice</i> were produced. They were tabled in the Senate on 28 September 2010 and 9 February 2011. The next edition is in preparation. The <i>Procedural Information Bulletin</i> was produced within the specified timeframe following all sitting periods and estimates hearings. A regular newsletter was instituted from the Clerk to senators and senators-elect, containing items of procedural interest, among other things.

## Overview

The Clerk's Office consists of the Clerk, the Deputy Clerk and their executive assistants.

The Clerk is the administrative head of the Department of the Senate and, in accordance with the *Parliamentary Service Act 1999*, is responsible, under the President of the Senate, for managing the department. The Clerk is also the principal adviser to the President and senators on proceedings in the Senate, parliamentary privilege, committee proceedings and their outcomes in the chamber, and other parliamentary matters. The Deputy Clerk supports the Clerk in these roles, has particular oversight of information management and corporate

governance, and chairs the department's Audit and Evaluation Committee.

Richard Pye was appointed as Deputy Clerk on 13 January 2011 following the retirement of Cleaver Elliott who had been acting in the position throughout 2010.

The full-time equivalent staffing level for the Clerk's office in 2010–11 was 4, consistent with the long-term average.

The cost of the office for 2010–11 was \$1.1 million (\$1.1 million in 2009–10).

### Procedural advice

The primary function of the Clerk's Office is to provide procedural and constitutional advice. The office gives oral and written advice but records only written advice because of the difficulty of quantifying oral advice. The office may provide the advice proactively or on request.

Figure 3 shows the number and kinds of written advices provided during 2010–11, and each kind as a proportion of the total (132). The total number represents a departure from long-term trends, which usually see a dip in demand for advice during the election period, consistent with the fluctuations in demand that occur during an electoral cycle. Demand for advice during the year was at a comparable level with demand during 2009–10, partly reflecting the level of interest in parliamentary reform following the 2010 election.

**Figure 3** Types of written advices provided by the Clerk, 2010–11

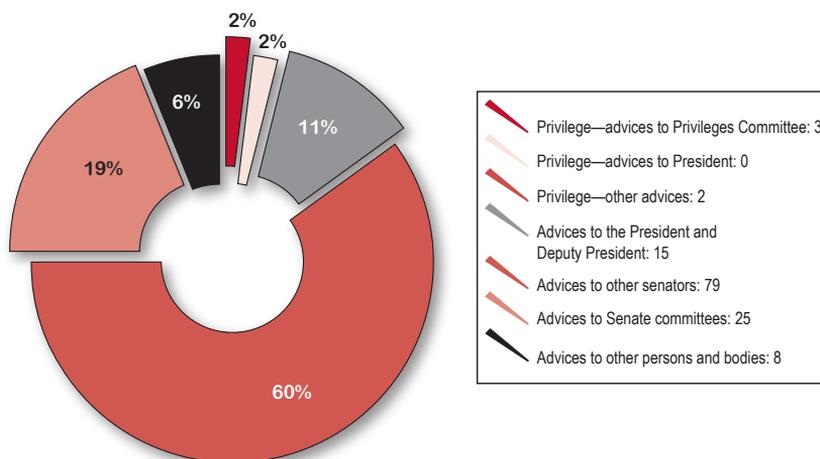
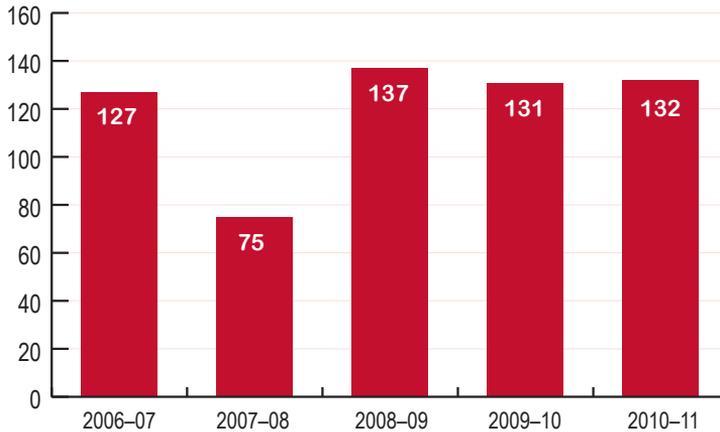


Figure 4 shows the number of written advices that the Clerk's Office has provided each year over the past five years.

**Figure 4** Number of advices provided by the Clerk's Office, 2006–07 to 2010–11



While the figures for most categories of advice were comparable with last year's figures, no new matters of privilege were raised during the year and, consequently, no advice was provided to the President on matters of privilege, whether possible cases of contempt or applications for rights of reply. More submissions were made to committees than in recent years, reflecting the parliamentary focus of many inquiries.

As is usual, advice covered a wide variety of subjects including the inquiry powers of the Senate, public interest immunity claims and procedures, grounds for disqualification of senators and candidates for election, proposals for parliamentary reform, protection of witnesses before committees, financial powers of the Senate, the meaning of the term 'ordinary annual services of the government' in section 53 of the Constitution, the introduction in the Senate of bills that have financial implications, the sub judice convention, the application of parliamentary privilege to working papers of the Australian National Audit Office, the effect of prorogation, procedures for the consideration of private senators' bills and the unauthorised disclosure of committee proceedings.

The Clerk made submissions to the following inquiries:

- *Inquiry into the eligibility of members of Parliament to serve on juries*, Standing Committee on Law and Justice, New South Wales Legislative Council, 19 July 2010

- *Inquiry into the Parliamentary Budget Office Bill 2010*, Senate Standing Committee on Finance and Public Administration, 20 July 2010
- *Inquiry into the Government Guidelines for Official Witnesses before Parliamentary Committees*, Senate Standing Committee of Privileges, 17 August 2010
- *Inquiry into fixed-term parliaments*, House of Lords Constitution Committee, 8 September 2010
- *Inquiry into the Social Security Amendment (Income Support for Regional Students) Bill 2010*, Senate Standing Committee on Education, Employment and Workplace Relations, 22 November 2010
- *Inquiry into the Parliamentary Budget Office*, Joint Select Committee on the Parliamentary Budget Office, 18 January 2011
- *Inquiry into the development of a draft code of conduct for senators*, Senate Standing Committee on Senators' Interests, 31 March 2011
- *Inquiry into the future direction and role of the Scrutiny of Bills Committee*, Senate Standing Committee for the Scrutiny of Bills, 12 April 2011
- *Inquiry into the adequacy and appropriateness of guidance and advice available to officers giving evidence to Senate committees and when providing information to the Senate*, Senate Standing Committee of Privileges, 10 May 2011
- *Inquiry into the Remuneration and Other Legislation Amendment Bill 2011*, Senate Standing Committee on Finance and Public Administration, 18 May 2011.

## Committees

The office is responsible for the administration of three Senate standing committees.

### Procedure Committee

The Clerk of the Senate served as secretary to the Procedure Committee, which responds to references from the Senate or the President by evaluating, and recommending improvements to, Senate procedure.

The committee met four times in 2010–11, in relation to numerous matters, and presented four reports. The committee recommended on two occasions that the temporary order providing modified rules for question time be extended. It also continued to examine the consideration of

private senators' bills and recommended procedures to enhance opportunities for their debate. Adopted at the end of 2010, a temporary order for consideration of private senators' bills operated throughout the first half of 2011 and was extended till the end of 2011. The committee reviewed administrative practices supporting the consideration of private senators' bills and suggested some enhancements which were adopted at the end of the reporting period.

Other subjects considered by the committee included the correction of divisions after misadventure, the operation of the provisions in standing order 55 to recall the Senate, consideration of committee reports and the use of formal business procedures under standing order 66. While no amendments to standing orders were proposed, the committee made several suggestions to improve the efficiency of Senate practices.

### **Committee of Privileges**

The Deputy Clerk served as secretary to the Committee of Privileges. The committee protects the integrity of Senate and committee proceedings by considering matters possibly amounting to contempt of the Senate. Those matters, which are a result of concerns raised by other committees or individual senators, are referred to the committee by the Senate. The Committee of Privileges also administers the right-of-reply mechanism for people seeking to respond to adverse comment made about them in the Senate.

The committee had a relatively quiet year, meeting five times in 2010–11 (20 times in 2009–10) and presented one report (a decrease from nine in 2009–10), the result of the one inquiry conducted by the committee.

### **Committee of Senators' Interests**

The Deputy Clerk also served as secretary to the Committee of Senators' Interests, and helped senators to fulfil the requirements of Senate resolutions relating to declarations of pecuniary interests and gifts.

In 2010–11, the committee met three times (three times in 2009–10), and presented its annual report as required by its terms of reference, as well as a report for the Senate's endorsement recommending arrangements for online publication of senators interests' statements. The secretariat continued to provide access to the register of senators' interests and to make copies of statements available on request. Fourteen requests for access were facilitated during the year.

As required under the relevant resolution of the Senate, senators continued to register alterations to their statements of interests. Volumes of alterations and new statements were prepared by the secretariat and tabled on 15 December 2010. Departmental Senior Executive Service (SES) officers' statements of interests were tabled on the same day. Another pair of volumes was prepared in June 2011 for tabling on 4 July.

The committee also received a reference on the development of a draft code of conduct for senators. That reference is expected to report before the end of the year.

## **Procedural information**

Two six-monthly supplements to *Odgers' Australian Senate Practice* were produced by the Clerk to record procedural developments up to 30 June 2010 and 31 December 2010. These were tabled in the Senate on 28 September 2010 and 9 February 2011. The supplements covered such matters as the government's response to the report of the Committee of Privileges on statutory secrecy provisions, the adoption of an acknowledgement of country at the commencement of proceedings, the outcome of the 2010 elections for the Senate, further developments in the dispute between the Senate and the government over 'ordinary annual services of the government', procedures for the referral to committees of time critical budget bills, consideration of private senators' bills, and orders for the production of documents.

Work commenced on the 13th edition of *Odgers' Australian Senate Practice*, which will be published in the next reporting period.

The Clerk produced issues of the *Procedural Information Bulletin* after each sitting period or period of estimates hearings. These bulletins covered all major procedural developments and issues of procedural interest arising in the proceedings of the Senate or during estimates hearings.

Information about Senate officers' presentations and papers appears in appendix 4.

## **Factors, events and trends influencing performance**

Despite the election, demand for written advice was on a par with demand in the two previous reporting cycles, with the election of a minority government in the House of Representatives following various agreements on parliamentary reform influencing the advisory work of the office in the first part of the year. The number of sitting days continued to

be well under the long-term average but, with committees meeting on most other days, there was a constant demand for the advisory services of the Clerk's Office.

Most advices are now provided by electronic means and are therefore available very quickly to the senators or others requesting them. As in previous years, advices were frequently published by their recipients and therefore subjected to public scrutiny. None was shown to be deficient or inaccurate although, as in previous years, some were contested.

The committees supported by the office all had inquiries during the year and, in some cases, that support was supplemented by resources from outside the office.

The structural review referred to in last year's annual report was finalised and implemented with the approval of the President and the Appropriations and Staffing Committee. A major outcome of the review was the redesign of the Deputy Clerk's duties to encompass a greater corporate governance role, and responsibility for information management and inter-parliamentary relations on behalf of the department. Another outcome was the implementation of a new learning and development framework for staff which is discussed in further detail in the Black Rod's Office chapter. Finally, the review recommended the establishment of a Senate Public Information Office (SPIO) to coordinate and better manage the department's information resources and outputs, including the Senate content on the yet to be released new Commonwealth Parliament website. The Appropriations and Staffing Committee supported a new policy proposal for additional resources for SPIO, but the government did not agree and did not provide the Senate or the committee with any reasons for the decision. While SPIO will come into operation at the beginning of the 2011–12 financial year as planned, its initial terms of reference will be necessarily modest.

The concentration of business on sitting days and the number of committees meeting at the same time creates challenges for the provision of effective support to senators. A new initiative during the year was the instigation of a newsletter to senators from the Clerk, with a special supplement for senators-elect (who endured an unusually long wait between their election and the commencement of their terms). As well as covering procedural items, the newsletter was used to provide updates on administrative matters and to introduce staff to senators and to explain their roles.

## Evaluation

The principal medium for the formal evaluation of services provided by the Clerk's Office, the biennial survey of senators, was conducted in February–March 2011. Senators surveyed were either highly satisfied (53%) or satisfied (47%) with advice on powers, privileges and proceedings provided by the Clerk's Office, and none were dissatisfied or neutral. Detailed interviews indicated that senators, particularly those in minor parties or who perform a party business role (such as whip), felt that this was one of the single most important services offered by the department. Retiring senators also paid tribute to the quality of support provided. As in previous years, the department responded to suggestions made in all forms by senators to improve the quality and range of services.

The immediate testing of advice provided by the office during estimates hearings and other proceedings of the Senate also continued, with senators seeking and relying on such advice on numerous occasions during 2010–11.

## Performance outlook

The major impact on the work of the office over the forthcoming year will be the commencement of the new Senate on 1 July 2011, with the first sitting to occur on 4 July. An orientation program for new senators will be held in the second week of July and support for new senators is expected to be a focus during the first few months of the year.

Work will escalate on the 13th edition of *Odgers' Australian Senate Practice* and on other procedural resources as required.

The office will also contribute to the creation of the proposed Parliamentary Budget Office as a separate parliamentary department for which ongoing funding was provided in the 2011–12 budget.