

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 28 September 2022. For this edition, a number of historical resolutions have been omitted. The resolutions can be viewed online at www.aph.gov.au/Senate/standing_orders

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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, adopted as an order of continuing effect on 17 September 2007.*

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)

8 Cross portfolio estimates hearing on Indigenous matters

That the Senate endorse the recommendation contained in paragraph 1.10 of the Community Affairs Committee report on the 2008–09 Budget estimates that:

Future estimates hearing programs include a separate time to conduct an estimates hearing on Indigenous matters that would include all the portfolios with budget expenditure or responsibility for Indigenous issues.

(26 August 2008 J.683)

9A Estimates hearings – Additional hearings on Fridays

- (1) That, for the purposes of any order setting out a schedule of estimates hearings by legislation committees:
 - (a) if the order provides for hearings, if required, on a designated Friday, an additional hearing of a committee is taken to be required on that Friday if any 3 members of the committee notify the chair in writing of a requirement for the committee to meet, including for a specified period of time; and

- (b) if the order does not provide for hearings, if required, on a designated Friday, an additional hearing of a committee is taken to be required on a relevant Friday if any 3 members of the committee notify the chair in writing of a requirement for the committee to meet, including for a specified period of time.
- (2) For the purposes of paragraph (1), a **relevant Friday** means any of the following, as the case requires:
 - (a) for additional estimates hearings, the Friday of a week in which committees in Groups A and B are scheduled to meet;
 - (b) for Budget estimates hearings, the Friday of a week in which committees in Group A are scheduled to meet;
 - (c) for Budget estimates hearings, the Friday of a week in which committees in Group B are scheduled to meet; and
 - (d) for supplementary Budget estimates hearings, the Friday of a week in which committees in Groups A and B are scheduled to meet.
 - (3) The operation of this order is subject to the restriction in standing order 26(3) that not more than 4 committees shall hear evidence on the estimates simultaneously.
 - (4) This order is of continuing effect.

(25 June 2014 J.1004)

9B Estimates hearings – Additional hearings generally

- (1) That an additional hearing of a legislation committee considering estimates is taken to be required if any 3 members of the committee notify the chair in writing of a requirement for the committee to meet for that purpose, including for a specified period of time.
- (2) For the purposes of paragraph (1), an **additional hearing** means a hearing in addition to any hearing required by, or pursuant to, an order of the Senate setting out days for legislation committees to meet to consider estimates or providing for such meetings to be held on spill-over days.
- (3) The operation of this order is subject to the restriction in standing order 26(3) that not more than 4 committees shall hear evidence on the estimates simultaneously.
- (4) This order is of continuing effect.

(25 June 2014 J.1005)

9C Transcription of evidence heard in an Indigenous language

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 evidence or a person from their community.

(17 October 2019 J.713)

9D Environment and Communications References Committee— Determination of committee chair

That, pursuant to standing order 25(9), the Senate determines:

- (a) that the chair of the Environment and Communications References Committee shall be elected by that committee from members nominated by minor parties or independent senators; and
- (b) that this order remain in effect until the President is duly notified of an agreement that meets the terms of standing order 25(9)(c).

(2 November 2011 J.1708, amended 13 September 2016 J.174)

9E Foreign Affairs, Defence and Trade Legislation Committee – *Australia’s Foreign Relations (State and Territory Arrangements) Act 2020* – reference of annual reports

That:

- (a) each annual report tabled by the Minister for Foreign Affairs pursuant to section 53A of the *Australia’s Foreign Relations (State and Territory Arrangements) Act 2020* (‘the Act’), stand referred to the Senate Foreign Affairs, Defence and Trade Legislation Committee for inquiry and report in accordance with standing order 25(20);
- (b) should the committee, as part of its inquiry into each annual report, request and receive information from the Minister related to the exercise of the Minister’s decision making powers under the Act that is information of the kind referred to in subsection 53(3) of the Act, the committee is to examine that information in confidence, including hearing any evidence in relation to such material in camera; and
- (c) this order is of continuing effect.

(3 December 2020 J.2701)

NOTE: *Agreed to by means of an amendment to the motion that the report of the committee on the Australia’s Foreign Relations (State and Territory Arrangements) Bill 2020 and a related bill be adopted.*

9F Standing Committee of Privileges – Independent Parliamentary Workplace Complaints Mechanism

That—

- (1) The Senate notes:
 - (a) the duties and responsibilities of senators and their staff employed under the *Members of Parliament (Staff) Act 1984*;
 - (b) that all senators and their staff have obligations to comply with all applicable Australian laws, including understanding workplace health and safety duties and the steps to take to satisfy those duties, under the *Work Health and Safety Act 2011* and other workplace laws; and

- (c) the establishment of the Parliamentary Workplace Support Service, which provides for an Independent Parliamentary Workplace Complaints Mechanism for serious incidents in a parliamentary workplace.
- (2) Where the Parliamentary Service Commissioner makes a report in writing to the President:
 - (a) finding that a senator has not cooperated with a review under the Independent Parliamentary Workplace Complaints Mechanism or has not acted on the recommendations in a review conducted under the Independent Parliamentary Workplace Complaints Mechanism; and
 - (b) requesting that the President refer the report to the Committee of Privileges; the President must confidentially refer the report to that committee and the report may not be considered by any other committee.
 - (3) In considering a report under this resolution, the committee must meet in private session.
 - (4) The committee must confer with the Parliamentary Service Commissioner in seeking additional information for its report.
 - (5) The committee must make one of the following recommendations, and report to the Senate accordingly:
 - (a) that a senator cooperate with a review conducted under the Independent Parliamentary Workplace Complaints Mechanism;
 - (b) that a senator act on the recommendations in a review conducted under the Independent Parliamentary Workplace Complaints Mechanism; or
 - (c) that no further action be taken by the Senate;and must not make any other recommendations.
 - (6) The committee must provide a statement of reasons for the recommendation made in the report.
 - (7) The committee must make its report referred to in paragraph (5) within 30 days of receiving a referral under this resolution, unless an explanation is provided in writing to the President with the nomination of a new reporting date. The President must inform the Parliamentary Service Commissioner of the new reporting date. The Parliamentary Service Commissioner must inform parties to the report of the revised date set by the committee.
 - (8) Any senator who, without reasonable excuse, fails to comply with a recommendation of a report referred to in paragraph (5), and which has been adopted by the Senate, shall be guilty of a serious contempt of the Senate and shall be dealt with by the Senate accordingly. The question of whether any contempt has been committed must first be referred to the Committee of Privileges for inquiry and report to the Senate and may not be considered by any other committee.

- (9) Notwithstanding paragraph (2), in the event that the President is the subject of or directly and personally involved in a report by the Parliamentary Service Commissioner, the Parliamentary Service Commissioner must make a report in writing under paragraph (2) to the Deputy President. In this event, references to the President in this resolution shall be read as the Deputy President.

(19 October 2021 J.4159)

Accountability

10 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)

11 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)

11A Public interest immunity claims – National Cabinet

That the Senate—

- (a) has rejected public interest immunity claims made on the grounds of cabinet confidentiality with respect to documents or information related to the ‘National Cabinet’;

- (b) will not countenance public interest immunity claims made on the grounds that provision of a document or information related to the National Cabinet ordered by the Senate, or sought by a Senate committee or a senator, would reveal cabinet deliberations;
- (c) directs the chairs of committees to draw this resolution to the attention of witnesses who seek to raise claims on this unacceptable ground;
- (d) requires those witnesses to:
 - (i) provide the documents or information, or
 - (ii) articulate a public interest immunity claim on a ground which may be acceptable to the Senate and to specify the harm to the public interest that could result from the disclosure; and
- (e) resolves that a response to a Senate order for the production of documents that relies on this unacceptable ground is not compliance with the order nor does it constitute a satisfactory explanation for why the order has not been complied with, including for the purposes of standing order 164(3).

(23 November 2021, J.4279)

Orders for documents

12 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)

13 Entity contracts

- (1) There be laid on the table, by each minister in the Senate, in respect of each entity 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) a list of contracts in accordance with paragraph (2) has been placed on the Internet, with access to the list through the entity’s home page; and
 - (b) includes an assurance by the entity head that the listed contracts do not contain any inappropriate confidentiality provisions.
- (1A) Order 1(b) takes effect from 1 July 2017.
- (2) The list of contracts referred to in paragraph (1) indicate:
 - (a) each contract entered into by the entity 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.
- (2A) For the purposes of paragraph (1)(a) as it applies to procurement contracts only, access from an entity's home page may include a link to a complying report on AusTender. If an entity has contracts to report other than procurement contracts, there must be a dedicated link to a list of such contracts from an entity's home page in addition to any link to AusTender.
- (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 entities are included; and
 - (c) contracts all of which are confidential are not included.
- (4) Where no contracts have been entered into by an entity, 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 2016 and 30 September 2018, 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 References 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:

“complying report on AusTender” means a report in respect of an individual entity that meets the requirements of this order in respect of procurement contracts;

“entity” means a Commonwealth entity within the meaning of the *Public Governance, Performance and Accountability Act 2013*, but does not include a trading Public Non-financial Corporation as classified by the Australian Bureau of Statistics;

“inappropriate confidentiality provision” means a confidentiality provision that is not in accordance with guidance issued by the Department of Finance on compliance with this order and approved by the Finance and Public Administration References Committee; 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.

- (9A) Until 1 July 2017, entity is taken to mean a non-corporate Commonwealth entity within the meaning of the *Public Governance, Performance and Accountability Act 2013*.

(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, 14 May 2015 J.2601)

15 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)

16 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)

18 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, amended 18 September 2002 J.761)

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.*

19 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.*

20 Trade – Free trade agreements

That the Senate—

- (a) notes that the United States Trade Representative has undertaken to publish the full text of all free trade agreements negotiated on behalf of the United States of America (US) ‘well before’ signing to invite further comments from the US Congress and the US people;
- (b) resolves that the Australian Senate and the people of Australia are entitled to scrutinise proposed agreements before signing; and
- (c) orders that there be laid on the table by the Minister representing the Minister for Trade, the full text of the proposed Korea-Australia Free Trade Agreement, the Trans-Pacific Partnership Agreement and other bilateral and plurilateral trade agreements at least 14 days before signing.

(11 December 2013 J.342)

21 Estimates hearings – Unanswered questions on notice

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 10 days before the commencement of the budget estimates, supplementary budget estimates and additional estimates hearings, a statement showing:
 - (a) the number of questions taken on notice at the previous round of estimates hearings;
 - (b) the number of answers provided to the committee by the date set by the committee for answers; and
 - (c) of those answers not provided to the committee by the due date, the dates on which answers were provided to the approving minister’s office.
- (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.

(25 June 2014 J.1003)

22 Former ministers – Meetings

That—

- (1) There be laid on the table, by each minister in the Senate, in respect of each Commonwealth 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 statement in accordance with the succeeding provisions of this order:

A statement, covering the period since the previous statement was tabled, in respect of each former minister, listing:

- (a) all meetings, including teleconferences, at which lobbying, advocacy or the consideration of business took place, including date, location and duration, between current ministers, secretaries or deputy secretaries (or equivalent), of any Commonwealth Department or Agency and former ministers;
 - (b) how many people attended or participated and the capacities in which people attended or participated; and
 - (c) what topics were considered at each of the meetings.
- (2) This order has immediate effect with the first statement for 2016-17 additional estimates covering all meetings from the date of commencement of this order to 7 days prior to additional estimates.
- (3) In this order:
- (a) “Commonwealth Department or Agency” means a Commonwealth entity, other than the Parliamentary Departments and the Office of the Official Secretary of the Governor-General, within the meaning of the *Public Governance, Performance and Accountability Act 2013*; and
 - (b) “former minister” means a person who is no longer a member of the Australian Parliament and who has been a minister in the 18 months prior to the estimates hearing at which the statement is due.
- (4) 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.
- (5) This order is of continuing effect.

(23 November 2016 J.580)

23 Report on outstanding orders for documents

- (1) That there be laid on the table by the Leader of the Government in the Senate, not later than 2 calendar months after the last day of each financial year and calendar year, a list showing details of all orders for the production of documents made during the current Parliament which have not been complied with in full, together with a statement indicating whether resistance to them is maintained and why, and detailing any changing circumstances that might allow reconsideration of earlier refusals.
- (2) This order is of continuing effect.

(7 December 2017 J.2534)

23A Australia’s National Greenhouse Gas Inventory – Quarterly updates

- (1) That there be laid on the table by the Minister representing the Minister for the Environment, by not later than 5 calendar months after each:
 - (a) 31 March;
 - (b) 30 June;
 - (c) 30 September; and
 - (d) 31 December,the quarterly update of Australia’s National Greenhouse Gas Inventory.
- (2) If the Senate is not sitting when a quarterly update is ready for presentation, the statement is to be presented to the President under standing order 166.
- (3) This order is of continuing effect.

(17 October 2018 J.3977)

23B Protection visas

- (1) The Senate notes that the Australian public has a right to know vital information that is held within the Department of Home Affairs, and that regular and timely information should be reported to the Senate and the Australian people to provide oversight and transparency on activities of the Department.
- (2) That there be laid on the table by the Minister representing the Minister for Home Affairs, by not later than 14 days after each:
 - (a) 31 January;
 - (b) 28 February;
 - (c) 31 March;
 - (d) 30 April;
 - (e) 31 May;
 - (f) 30 June;
 - (g) 31 July;
 - (h) 31 August;
 - (i) 30 September;
 - (j) 31 October;
 - (k) 30 November; and
 - (l) 31 December;a monthly update of onshore protection visa lodgements.

- (3) Each monthly update must include the total number of:
- (a) protection visa lodgements made onshore during the period;
 - (b) protection visa lodgements made onshore at airports, by airport and state, during the period;
 - (c) individuals, by country of origin, that made a lodgement for a protection visa onshore during the period;
 - (d) individuals, by age and gender, that made a lodgement for a protection visa onshore during the period;
 - (e) refugee status determinations made during the period;
 - (f) individuals granted a Final Protection Visa during the period;
 - (g) individuals, by country of origin, granted a Final Protection Visa during the period, and the grant rate;
 - (h) individuals, by age and gender, granted a Final Protection Visa during the period, and the grant rate;
 - (i) individuals that were not granted a Final Protection Visa during the period, and the grant rate;
 - (j) individuals, by country of origin, that were not granted a Final Protection Visa during the period, and the grant rate;
 - (k) individuals, by age and gender, that were not granted a Final Protection Visa during the period, and the grant rate;
 - (l) individuals that were not granted a Final Protection Visa that were deported during the period, and the deportation rate;
 - (m) refugee status determinations awaiting a decision at the end of the period; and
 - (n) individuals that were not granted a Final Protection Visa that have yet to be deported at the end of the period.
- (4) If the Senate is not sitting when a monthly update is ready for presentation, the statement is to be presented to the President under standing order 166.
- (5) This order is of continuing effect.

(14 November 2019 J.852)

23C Emissions projections

- (1) That there be laid on the table by the Minister representing the Minister for the Environment, by not later than the last sitting day of each year, the report detailing Australia's estimated future greenhouse gas emissions, *Australia's Emissions Projections*.
- (2) This order is of continuing effect.

(25 November 2019 J.894)

23D Australian Research Council – grant recommendations

- (1) That there be laid on the table, by the Minister responsible for the Australian Research Council, or when that minister is in the House of Representatives, the minister in the Senate representing that minister, by not later than 15 days after the end of each calendar month, a letter of advice that a list, meeting the requirements of paragraph (2), of all Australian Research Council grant recommendations received by the responsible minister each month, has been published on the internet.
- (2) The list of grant recommendations must be published in a machine readable format and specify the following information for each recommendation:
 - (a) identification or application number;
 - (b) title of application;
 - (c) scheme or stream;
 - (d) date received by the responsible minister;
 - (e) whether the grant was approved or not approved by the responsible minister;
 - (f) date of the responsible minister’s decision;
 - (g) date the applicant was informed of the grant outcome;
 - (h) the amount of funding granted (if any); and
 - (i) whether the grant was publicly announced and, if so, the date of the announcement.
- (3) If the Senate is not sitting when the letter is ready for presentation, the letter is to be presented to the President under standing order 166.
- (4) This order is of continuing effect.

(27 February 2020 J.1511)

23E Commonwealth Grants Rules and Guidelines

- (1) That there be laid on the table by the Minister for Finance, by no later than 30 April of each calendar year:
 - (a) all reports and correspondence received by the Minister for Finance under paragraph 4.12 of the Commonwealth Grants Rules and Guidelines 2017 during the preceding calendar year (noting that the Guidelines do not apply to all grant administrators, including not applying to the allocation of funding by Sports Australia under the Community Sport Infrastructure Grants program (‘Sports Rorts’)); and
 - (b) a summary of the decisions reported under paragraph 4.12 of the Commonwealth Grant Rules and Guidelines 2017, including the Central Budget Management System program title, sub-program, grant activity, grantee, total grant value, grant funding location, postcode, and a brief statement of reason for the decision.

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

(12 May 2020 J.1644)

Questions

24 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

25 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.67, 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)

Senate chamber

26 Display of flags

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)

The Senate—

- (a) notes the resolution of 8 October 1992 relating to the display of the Australian Flag in the Senate chamber;
- (b) resolves that, consistent with its previous resolution, the Aboriginal Flag and the Torres Strait Islander Flag be displayed alongside the Australian Flag in the Senate chamber; and
- (c) directs that the flags be installed within three weeks after the passage of this resolution.

(27 July 2022 J.72)

27 Seating

- (1) The President shall provide chairs on the floor of the chamber 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, amended 24 September 2014 J.1492)

28 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)

Miscellaneous

30 Indigenous Australians – Closing the Gap report – Parliamentary consideration

- (1) That the Senate—
 - (a) notes the national framework agreed to by the Council of Australian Governments (COAG) in 2008 to tackle Indigenous disadvantage and the six priority areas for change identified by COAG;
 - (b) further notes that reports are presented by the Prime Minister to the Australian Parliament annually on progress in meeting these ‘Closing the Gap’ targets, along with a response by the Leader of the Opposition;
 - (c) is of the view that the presentation of these annual reports should be marked by a special parliamentary procedure in recognition of the significance of these initiatives to all Australians;
 - (d) therefore proposes to the House of Representatives that it consider marking the presentation of the Prime Minister’s annual report on ‘Closing the Gap’ by:
 - (i) hosting a meeting of the House to which senators are invited, and
 - (ii) inviting senior Indigenous leaders to be present when the Prime Minister’s annual report is presented; and
 - (e) resolves that, on its presentation to the Senate, the Prime Minister’s annual report on ‘Closing the Gap’ and accompanying ministerial statement be listed for consideration as a government business order of the day, and that the Government undertake to provide for at least 2 hours consideration of the statement during government business time, not more than eight sitting days following the presentation of the report to the Senate.
- (2) This order have continuing effect.

(9 February 2017 J.885)

30A Closing the Gap statement – Suspension of sitting

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 10 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.

(17 October 2019 J.713)

Resolutions expressing opinions of the Senate

Parliamentary appropriations and administration

31 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 (now known as the Standing Committee on Appropriations, Staffing and Security) with the responsibility, *inter alia*, of determining appropriations for the Senate.

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.*

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.*

32 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)

33 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.*

Appropriations – ordinary annual services of the government

34 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 (but not including the acquisition of computers or the fitting out of buildings);
 - (d) grants to the states under section 96 of the Constitution;
 - (e) new policies not previously authorised by special legislation;
 - (f) items regarded as equity injections and loans; and
 - (g) existing asset replacement (which is to be regarded as depreciation),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.
- (3) That, in respect of payments to international organisations:
 - (a) the initial payment in effect represents a new policy decision and therefore should be in Appropriation Bill (No. 2); and
 - (b) subsequent payments represent a continuing government activity of supporting the international organisation and therefore represent an ordinary annual service and should be in Appropriation Bill (No. 1).
- (4) That all appropriation items for continuing activities for which appropriations have been made in the past be regarded as part of ordinary annual services.

(22 June 2010 J.3642)

NOTE: *New resolution incorporating resolutions of 17 February 1977 and 8 December 2004, and changes agreed to in 1988, 1989 and 1999.*

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.

35 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)

36 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).

37 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)

38 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)

38A Seizure of material by executive agencies

That the Senate—

- (a) notes that:
 - (i) the law of parliamentary privilege is intended to protect the ability of legislative Houses, their members and committees, to exercise their authority and perform their duties without undue external interference, and
 - (ii) an aspect of that law is the protection of the legislature against improper interference by the judiciary and the executive;
- (b) further notes and affirms that:
 - (i) the powers, privileges and immunities of the Senate and the House of Representatives are secured through s.49 of the Constitution, and include the traditional freedoms formulated in Article 9 of the Bill of Rights 1688, protecting speech and debates in Parliament against being impeached or questioned in any court or place out of Parliament,
 - (ii) the protection of privileged material in proceedings of courts and tribunals, descended from Article 9, is declared and enacted in s.16 of the *Parliamentary Privileges Act 1987*,

- (iii) the protections recited in Article 9 and secured through s.49 are not confined to courts and tribunals, but also encompass the protection of privileged material against incursion by the executive and executive agencies,
 - (iv) the protection of privileged material against seizure by executive agencies under warrant is acknowledged and secured by a settlement between the legislature and the executive, whose purpose is to ensure that search warrants are executed without improperly interfering with the functioning of Parliament, and
 - (v) the National AFP Guideline developed under this settlement is intended to enable informed claims of privilege to be made and determined, with seized material sealed with a third party until those claims are resolved;
- (c) declares, for the avoidance of doubt:
- (i) that the right of the Houses to determine claims of privilege over material sought to be seized or accessed by executive agencies adheres regardless of the form of the material, the means by which those agencies seek seizure or access, and the procedures followed, and
 - (ii) in particular, that these rights adhere against the covert use of intrusive powers, by which agencies may seek to seize or access information connected to parliamentary proceedings without the use or presentation of warrants;
- (d) requires the executive and executive agencies to observe the rights of the Senate, its committees and members in determining whether and how to exercise their powers in matters which might engage questions of privilege; and
- (e) calls on the Attorney-General, as a matter of urgency, to work with the Presiding Officers of the Parliament to develop a new protocol for the execution of search warrants and the use by executive agencies of other intrusive powers, which complies with the principles and addresses the shortcomings identified in reports tabled in the 45th Parliament by the Senate Committee of Privileges and the House of Representatives Committee of Privileges and Members Interests.

(6 December 2018 J.4485)

Opening of Parliament and meetings with House of Representatives

39 Opening of Parliament – ‘Welcome to Country’ ceremony

That the Senate is of the view that the declaration of the opening of Parliament should be preceded by an Indigenous ‘Welcome to Country’ ceremony.

(23 June 2010 J.3671)

40 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.*

Senate

41 Casual vacancies – political party

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.*

42 Casual vacancies – timing of filling

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.1864)

43 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.*

44 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. 1932.

24 August 1983 – Senate Debates (Hansard) p. 141.

5 November 1991 – Journals p. 1625.

46 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.*

Accountability

47 Statutory bodies

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. Reaffirmed 23 October 1974 J.283, 4 June 1984 J.902 and 29 May 1997 J.2042.

49 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.

(26 June 1998 J.4079)

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.

50 Public funds – duties of officers

That the Senate—

- (a) reaffirms:
 - (i) the principle, stated previously in resolutions of 9 December 1971, 23 October 1974, 18 September 1980, 4 June 1984, 29 May 1997 and 25 June 1998, 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, and
 - (ii) its expectation that officers, including agency heads, will appear before committees in fulfilment of their accountability obligations, whenever their presence is requested by committees;

- (b) in relation to the provision of exceptions to the general principle reaffirmed in paragraph (a), notes and reaffirms:
 - (i) Privilege Resolution 1(16) which provides that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy, and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister,
 - (ii) the resolution of 16 July 1975, relating to the powers of the Senate and the accountability of witnesses, and requiring any claim to withhold information from the Senate to be based on an established ground, and
 - (iii) the order of 13 May 2009 setting out the proper process for raising public interest immunity claims;
- (c) notes that:
 - (i) the statutory values which Australian Public Service agency heads and employees are required to uphold include a requirement to be open and accountable to the Australian community under the law and within the framework of ministerial responsibility, and
 - (ii) the Constitutional framework of checks and balances under a separation of powers places the Parliament in prime position as the agent of accountability, representing the Australian people;
- (d) calls on the Government to issue a general instruction to all public service agency heads and employees about their duty to cooperate with parliamentary committee inquiries, including by formalising the revised guidelines for official witnesses appearing before parliamentary committees (last issued in 1989), a revised draft of which was provided to the Committee of Privileges in 2012 and considered in its 153rd Report; and
- (e) requires:
 - (i) the chairs of legislation committees considering estimates to draw the provisions of paragraphs (a) and (b) of this resolution to the attention of any witness who declines to provide information to a committee on any basis other than those specified, and
 - (ii) the Clerk to draw this resolution, and the resolutions referred to in paragraph (b), to the attention of the heads of all agencies appearing before legislation committees, prior to each round of estimates.

(25 June 2014 J.1005)

51 Inquiry powers and Freedom of Information Act provisions

That the Senate—

- (a) notes the frequency with which freedom of information legislation is invoked to withhold information from senators and the Senate, not only by reference to grounds of exemption in the legislation but also apparently on the basis that an answer will not be provided if a Freedom of Information (FOI) request has been lodged for the same information;

- (b) recalls the observations of the Procedure Committee in its Third Report of 1992 that:
 - (i) there is no basis in law for the application of the FOI Act to the production of documents to a House,
 - (ii) if a minister were to regard all of the exemption provisions in the FOI Act as grounds on which to claim a privilege against disclosure of information to a House, this would considerably expand the grounds of executive privilege hitherto claimed, and
 - (iii) the use of the provisions of the FOI Act as a checklist of grounds for non-disclosure does not relieve a minister of the responsibility of carefully considering whether the minister should seek to withhold documents from a House, or from considering the question in the context of the importance of the matters under examination by the House;
- (c) resolves that the same principles apply to the provision of information to committees in response to questions asked by senators, which require the same careful consideration by ministers; and
- (d) declares that declining to provide documents or answer questions on the basis that an FOI request has been made for the same information is an unacceptable response, is not supported by the FOI Act and shows a profound lack of respect for the Senate and its committees.

(25 June 2014 J.1003)

53 Training – accountability and privilege

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)

That senior officers in the Department of Parliamentary Services involved in the administration of the CCTV system and other systems managed on behalf of the Parliament undertake some structured training to acquaint themselves with the principles of privilege.

(12 February 2015 J.2184)

NOTE: Part of a longer resolution adopting the recommendations of the 160th report of the Committee of Privileges.

53A Standing Committee for the Scrutiny of Delegated Legislation – engagement with ministers and agencies

That the Senate—

- (a) notes that:
 - (i) an essential function of the Senate is to scrutinise the law-making power that the Parliament has delegated to the executive and to hold the executive to account in this regard,
 - (ii) since 1932 the Standing Committee for the Scrutiny of Delegated Legislation has operated in a bipartisan and consensual manner to support the Senate in this role by assessing all disallowable delegated legislation against its longstanding scrutiny principles, which were most recently endorsed by the Senate in November 2019, and
 - (iii) to effectively fulfil its mandate the committee relies on the constructive and timely engagement of ministers and agencies on the technical scrutiny concerns raised by the committee;
- (b) calls on all ministers and agencies to:
 - (i) respond to the committee’s requests for information in relation to its technical scrutiny concerns within the timeframes set by the committee, and
 - (ii) implement undertakings made to the committee in a timely manner; and
- (c) calls on all shadow ministers to actively consider comments made by the committee in relation to delegated legislation made in their portfolios.

(23 February 2021 J.3148)

53B Delegated legislation – Disallowance and sunseting

- (1) That the Senate notes:
 - (a) the Constitution vests the legislative power of the Commonwealth in the Federal Parliament;
 - (b) if the Parliament is to satisfy this constitutionally mandated role, it must have the ability to scrutinise all legislation made by the executive; and
 - (c) exemptions from disallowance and sunseting undermine the ability of the Parliament, and particularly the Senate, to undertake this scrutiny.
- (2) That the Senate resolves:
 - (a) delegated legislation should be subject to disallowance and sunseting to permit appropriate parliamentary scrutiny and oversight unless there are exceptional circumstances; and

- (b) any claim that circumstances justify exemption from disallowance and sunseting will be subjected to rigorous scrutiny with the expectation that the claim will only be justified in rare cases.

(16 June 2021 J.3581)

