

The Senate

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## Procedure Committee

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Hours of meeting and routine of business

Tracking public interest immunity claims

Absence of a senator during a vote due to misadventure

Mode of dress for senators and possible 'time out' rule

Parliamentary Code for respecting cultural diversity and  
proposal to amend standing order 193

First report of 2017

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## **MEMBERS OF THE COMMITTEE**

Senator the Hon Scott Ryan (President of the Senate, Deputy Chair)

Senator Sue Lines (Deputy President and Chair of Committees, **Chair**)

Senator the Hon George Brandis QC (Leader of the Government in the Senate)

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

Senator Catryna Bilyk (Tasmania)

Senator David Bushby (Tasmania)

Senator the Hon Mitch Fifield (Victoria)

Senator Katy Gallagher (Australian Capital Territory)

Senator Rachel Siewert (Western Australia)

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# Procedure Committee

## First report of 2017

The committee reports to the Senate on the following matters.

### Hours of meeting and routine of business

The committee noted the work of a procedural working group comprising senators representing the parties and the crossbench, dealing with nominated elements of the routine of business. Following consideration by the working group, the committee agreed to recommend changes to the hours of meeting and routine of business, as follows:

- provide for 5-minute speeches, rather than 10-minute speeches, on the Wednesday adjournment, so that more senators may participate
- remove the option for 20-minute speeches on the Tuesday adjournment
- require that speakers' names for the Tuesday adjournment be provided to the Government Whips' Office by 5pm, but that this be a matter of practice not codified in the standing orders, and that senators may nevertheless speak if the need arises
- provide for an earlier start to sittings on Tuesday (noon, instead of 12.30pm), in line with the House of Representatives
- move consideration of private senators' bills from Thursday morning to Monday morning.

The committee agreed that the proposed changes should take effect from the next sitting week until 30 June 2018, and would be reviewed by the committee before that date.

### Recommendation 1

The committee **recommends** that the Senate adopt the proposed amendments to the standing orders in Appendix 1, and that the changes take effect as temporary orders from the next sitting week until 30 June 2018.

The committee also considered, but did not reach agreement on, proposals from the working group to change arrangements for motions to take note of answers, under standing order 72(4). The committee notes that crossbench senators continue to be concerned about current opportunities to contribute to debate on such motions.

## **Tracking public interest immunity claims**

The committee noted that there has been some improvement in adherence to guidance in the committee's [second report of 2015](#) about practices which should be followed in making public interest immunity claims.

However, the committee also noted that rates of compliance with orders were reasonably low and considered that there may be scope for compliance efforts to be sharpened by an order of continuing effect requiring governments to report to the Senate every 6 months on orders that remain on the Notice Paper.

## **Recommendation 2**

Accordingly, the committee **recommends** that the Senate adopt an order of continuing effect in the following terms:

### **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.

## **Absence of a senator during a vote due to misadventure**

The committee considered a letter from Senator Reynolds, referred by the then President, requesting that it review the circumstances of a senator's absence for a vote on 11 May 2017, and a request on the next day of sitting (13 June) that the vote be taken again. The committee endorsed a background note about 'misadventure', the circumstances of the particular matter, and options for rescinding and revisiting votes. The note is published at Appendix 2.

## **Mode of dress and a possible 'time out' rule**

The committee considered matters referred to the committee by then President Parry on 4 September 2017, and the possible 'time out' rule for the Senate attached to the referral (Appendix 3). The committee noted that, President Parry had indicated that he would not support introduction of the 'time out' rule unless there was broad support for it. Committee members indicated that there was not broad support for the proposal, and the committee resolved that the proposed time out rule should not progress.

On the question of the need to implement an order relating to the dress of senators, the committee agreed that existing rules were sufficient and that current practice (which leaves choice of dress to the good judgement of senators) should continue. The

committee agreed to incorporate in its report the exhortation to senators in the last part of President Parry's statement to the Senate on 4 September 2017, namely:

I again reiterate that the mode of dress is a matter for all senators but would ask that the respect and dignity of the Senate is forefront in the minds of each and every one of us when making such decisions.

**Parliamentary Code for respecting cultural diversity and proposal to amend standing order 193—Rules of debate**

The committee considered the two matters referred by the Senate on 6 September 2017 (Appendix 4) but did not agree to adopting the proposed code as an order of the Senate, and did not agree to the amendments proposed to standing order 193.

Senator Sue Lines

**Chair**





## APPENDIX 1

### Hours of meeting and routine of business

#### Proposed changes to adjournment debates

Amendment to standing order 54(5) to provide for 5-minute speeches, rather than 10-minute speeches on Wednesdays. Amendment to standing order 54(6) to remove the option for 20-minute speeches during the open ended adjournment on Tuesdays.

#### 54 Adjournment without motion

- (5) ~~Except on Tuesday~~ **On Monday and Thursday** debate on the question for the adjournment shall not exceed 40 minutes, and a senator shall not speak to that question for more than 10 minutes ~~on any day~~.

**On Wednesday debate on the question for the adjournment shall not exceed 40 minutes, and a senator shall not speak to that question for more than 5 minutes.**

On Tuesday at the conclusion of debate, and on other days at the expiration of 40 minutes, at the conclusion of debate, or at the time specified for adjournment, whichever is the earlier, or if there is no debate, the President shall adjourn the Senate without putting the question.

- (6) On the question for the adjournment of the Senate on Tuesday, a senator shall speak to that question for not more than 5 minutes, except **that**, ~~in accordance with the following paragraphs:~~
- (a) ~~if no other senator wishes to speak for up to 5 minutes, a senator who has not already spoken may speak for up to 10 minutes; and~~
  - (b) ~~if no other senator wishes to speak under paragraph (a), a senator who has not already spoken may speak for up to 20 minutes.~~

#### Meeting times

Amendment to standing order 55 to add 30 minutes at the start of sittings on Tuesdays.

#### 55 Times of meetings

- (1) The days and times of meeting of the Senate in each sitting week shall be:

Monday	10 am – 6.30 pm, 7.30 pm – 10.30 pm
Tuesday	<del>12.30 pm</del> <b><u>midday</u></b> – adjournment
Wednesday	9.30 am – 8 pm
Thursday	9.30 am – 8.40 pm.

### **Private senators' bills**

Amendments to standing order 57 and 59 to move consideration of private senators' bills general business from Thursday to Monday and provide for government business to occur at the start of the day on Thursdays.

### **57 Routine of business**

- (1) The routine of business shall be:
  - (a) On Monday:
    - (i) **General business orders of the day for consideration of bills only**
    - (ia) At 12.20pm,** government business only
    - ...
  - (d) On Thursday:
    - ~~(i) General business orders of the day for consideration of bills only for up to 2 hours 20 minutes~~
    - (i) Government business only**
    - (ii) At 11.45 am,** Petitions
    - ...

### **59 Government and general business**

Government business shall take precedence over general business, except that general business shall take precedence over government business as follows:

- (a) **On Mondays, from 10 am until midday until 12.20 pm** general business orders of the day for the consideration of bills shall be considered; and
- (b) from not later than 4.30 pm, for a period not exceeding 2½ hours, general business orders of the day shall take precedence over general business notices of motion on alternate Thursdays.

## APPENDIX 2

### **Matter raised by Senator Reynolds – Misadventure and explanations for a senator's absence from a vote**

The then President referred a request, from Senator Reynolds, that the committee review the circumstances of the vote on a disallowance motion on 13 June 2017 and the practice adopted when a Senator is absent from a vote due to misadventure. Senator Reynolds attached to her letter a *BuzzFeed* news article, referring to the initial vote taken on 11 May 2017, and an extract from the Senate Hansard of 13 June 2017 containing what Senator Reynolds described as ‘the subsequent and contradictory explanation’ made by Senator Lambie.

#### **‘misadventure’**

The Senate has for many years proceeded on the basis that its decisions should reflect the composition of the Senate as elected. This principle underpins the Senate’s practice of allowing divisions to be taken again, by leave, where they have been affected by ‘misadventure’. There is no precise definition of that term, but it suggests that a senator intending to vote was prevented by circumstances from doing so. The practice is based on standing order 104, which provides that a division may be taken again if necessary to ensure that a decision based on confusion or error does not stand.

The accepted practice is that a senator affected by misadventure seeks leave of the Senate to explain the circumstances of their missing the vote. For example, the second reading vote on the Passenger Movement Charge Amendment Bill 2016, lost on 23 November 2016, was put again by leave the following day, after the senators involved explained their earlier absence. The Senate has generally accepted such explanations and given leave for the vote to be held again; however, leave may be refused by any senator.

On 13 June 2017, Senator Lambie provided an explanation for missing a vote on the previous sitting day, 11 May. Leave was refused to have the question put again, however, apparently on the basis of conflicting reports of the senator’s intentions and the delay in her making the explanation. After leave was refused, the proponent of the motion successfully suspended standing orders and the Senate ordered that the vote be taken again. [The division revealed that a number of senators had changed their positions in the intervening time: what had been an equally divided vote in May succeeded 40 Ayes to 30 Noes in June.]

**Discussion**

As noted above, the practice in cases of misadventure is based on standing orders intended to ensure that decisions made in cases of confusion or error do not stand.

Following the practice, by making an explanation, does not guarantee that a vote will be taken again; any senator may refuse leave. If leave is refused, the original vote stands, unless authority to revisit the matter is found elsewhere. For instance, the standing orders provide a mechanism for the rescission of Senate votes after notice – sometimes requiring an extended period of 7 days’ notice – and requiring an absolute majority: standing order 87. The Senate may also rescind or reverse earlier decisions with leave, or pursuant to a suspension of standing orders. In effect this is what has happened in this case: leave to correct the effects of a claimed misadventure was refused, but a majority of the Senate agreed to suspend standing orders to require the question to be put again.

It may reasonably be expected that claims of misadventure should be raised promptly after the vote in which they occurred, although what is reasonable will no doubt vary with circumstances. There are procedural and statutory constraints on revisiting certain votes on legislative matters, in any case. For instance a bill passed by the Senate and returned to the House cannot be recalled, and a vote on a disallowance motion may not be revisited after the statutory period for disallowance.

## APPENDIX 3

### Matter referred by then President Parry— Mode of dress and a possible 'time out' rule



PARLIAMENT OF AUSTRALIA

**PRESIDENT OF THE SENATE**  
SENATOR THE HONOURABLE STEPHEN PARRY



4 September 2017

Senator Sue Lines  
Deputy President and Chair of Committees  
SG.44, Parliament House  
Canberra ACT 2600

Dear Deputy President *Sue,*

Pursuant to standing order 17(3) I refer the following matters to the Procedure Committee for its consideration.

#### **1. Whether the mode of dress of senators in the Senate should be regulated**

The Standing Orders do not regulate dress standards. Odgers' Australian Senate Practice states:

There are no rules laid down by the Senate concerning the dress of senators. The matter of dress is left to the judgment of senators, individually and collectively, subject to any ruling by the President. [14th edition, p. 182]

This statement is based on rulings of Presidents and Chairs of Committees from the 1960s and 1970s, and on a report of the House Committee, adopted by the Senate in 1972. The House Committee concluded that "rules relating to dress in the Chamber should not be necessary and that the choice of appropriate clothing should be left to Senators' discretion".

This remains the current practice.

I draw the committee's attention to my statement to the Senate today and ask the committee to consider whether a change to this practice is warranted.

## **2. A 'time out rule for the Senate to aid in the enforcement of standing orders**

In my statement today I also draw the Senate's attention to the limited ability of the President, Deputy President, or other occupants of the Chair to independently enforce the standing orders.

If any Senator refuses to comply with a request from the Chair, the occupant of the Chair has limited independent authority to enforce that request. Unlike the Speaker of the House of Representatives, the President does not have the ability to suspend a Senator for breaching the standing orders. The only course open for the Chair is to have the matter put to a vote of the Senate.

The process is set out in standing order 203, which limits the President's role to reporting infringement of order to the Senate; seeking an explanation or apology from the Senator concerned; and leaving it to the Senate to decide what, if any, action to take. In order for even this much to happen, a clear infringement has to be identified. Standing order 203 limits the possible range of infringements to the following circumstances:


If a Senator

- (a) persistently and wilfully obstructs the business of the Senate;
- (b) is guilty of disorderly conduct;
- (c) uses objectionable words, and refuses to withdraw such words;
- (d) persistently and wilfully refuses to conform to the standing orders; or
- (e) persistently and wilfully disregards the authority of the chair,

the President may report to the Senate that the senator has committed an offence.

I ask the committee to consider whether the standing orders should be modified to enable the President or the Deputy President to suspend a senator for a period of time for failing to comply with the directions of the Chair when enforcing standing orders.

I attach a possible draft standing order which the committee may wish to consider.

Yours sincerely 

(STEPHEN PARRY)

## 203 Infringement of order

(1) If a senator:

- (a) persistently and wilfully obstructs the business of the Senate;
- (b) is guilty of disorderly conduct;
- (c) uses objectionable words, and refuses to withdraw such words;
- (d) persistently and wilfully refuses to conform to the standing orders; or
- (e) persistently and wilfully disregards the authority of the chair,

the President may report to the Senate that the senator has committed an offence.

(2) If an offence has been committed by a senator in a committee of the whole, the chair may suspend the proceedings of the committee and report the offence to the President.

(3) A senator who has been reported as having committed an offence shall attend in the senator's place and be called upon to make an explanation or apology, and then a motion may be moved that the senator be suspended from the sitting of the Senate. No amendment, adjournment or debate shall be allowed on such a motion, which shall be immediately put by the President.

(4) Prior to reporting a senator under paragraph (1), the President may request the senator to leave the Senate Chamber for a period of one hour.

(5) Prior to requesting that a senator leave the Senate Chamber under the provisions of paragraph (4), the President must have warned the senator the suspension provisions of paragraph (4) will be implemented if the senator does not comply with the provisions of this Standing Order and briefly outline the nature of the infringement.

(6) Any senator requested to leave the Senate Chamber under paragraph (4) shall do so immediately without debate or delay, and shall not return until the expiration of one hour except:

- (a) if a division is required; or
- (b) if a quorum is not present and the bells are rung to indicate such.

Any Senator that returns under the provisions of (a) or (b) of this paragraph shall only remain in the Senate Chamber for the purpose of such division or until a quorum is declared as being present.

(7) When a Senator is requested to leave the Senate Chamber under paragraph (4), the President shall declare to the Senate the time at which the request is made, for the purpose of counting down the one hour suspension. The Clerk shall keep such record.

(8) The provisions of paragraph (4) shall only be exercised by the President or the Deputy President.

## SPEECH

<b>Date</b> Monday, 4 September 2017 <b>Page</b> 6057 <b>Questioner</b> <b>Speaker</b> PRESIDENT, The	<b>Source</b> Senate <b>Proof</b> No <b>Responder</b> <b>Question No.</b>
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The PRESIDENT (10:01): On Thursday, 17 August, I indicated that I would reflect on matters that arose during question time that day. These reflections were prompted by Senator Hanson's decision to wear a burqa into the Senate chamber. Wearing this garment completely concealed her identity.

The facts as now known are that after the commencement of question time, Senator Hanson's office contacted Parliament House security asking for an escort to ensure that Senator Hanson could walk to the Senate chamber from her office without any undue interference from the media. Shortly thereafter, a parliamentary security officer stationed near the Senate entrance observed the media photographing a figure completely concealed in a black burqa. The officer asked if the person concealed was indeed Senator Hanson and Senator Burston clearly indicated it was.

Senator Burston also confirmed Senator Hanson's identity to a Senate chamber attendant as they entered the chamber together, and this was conveyed to me by the Clerk. If it was not clear who the person was, then I would have requested that the person be removed under the provisions of standing order 175(2)(b) and standing order 175(4). Senators may recall that I stated:

I've been advised by the clerk via the attendant that the identity of Senator Hanson was established before she entered the chamber.

Since then I have conducted further investigation, including interviewing two parliamentary security officers directly concerned with the incident and established that they were satisfied of Senator Hanson's identity, primarily upon the indication by Senator Burston. The word of Senator Burston alone is, in my view, sufficient.

Two key elements have arisen from this. Firstly, the issue of security of the Senate chamber and Parliament House itself. Secondly, the appropriateness of what Senators should wear into the Senate chamber and the ability of the President or Chair to deal with any such issue.

Let me deal quickly with the security matter first. I want it clearly known that at no point was the integrity of the security of Parliament House ever placed at risk by Senator Hanson, or, for that matter, any person. The practice in place is that any senator, member or any other person entering Parliament House is not permitted through the security screening areas unless that person is clearly identified. Senator Hanson entered the building that day in the normal manner. Senator Hanson donned the burqa in her office, within the secure area of the Senate wing, prior to attending the chamber.

Now to the matter relating to the mode of dress in the Senate Chamber. The standing orders do not regulate dress standards. *Odgers' Australian Senate Practice* states:

There are no rules laid down by the Senate concerning the dress of senators. The matter of dress is left to the judgment of senators, individually and collectively, subject to any ruling by the President.

That's from the 14th edition of *Odgers*, page 182. This statement is based on rulings of presidents and chairs of committees from the 1960s and the 1970s and on a report of the House Committee adopted by the Senate in 1972. The House committee concluded:

... rules relating to dress in the Chamber should not be necessary and that the choice of appropriate clothing should be left to Senators' discretion.

This remains the current practice today. In fact, I have on more than one occasion, when senators were wearing garments or sporting attire to highlight a cause, indicated to senators that I did not intend to regulate the mode of dress but asked that senators be mindful of what is worn or displayed in the chamber. On other occasions, I



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Monday, 4 September 2017

THE SENATE

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have clearly ruled that clothing containing logos or other promotional material cannot be displayed and requested the removal of such.

Of course, it is a matter for the Senate whether there is a need, or not, to change current practice, so I have today written to the Procedure Committee asking that it consider whether this practice should be modified. In the absence of a clear rule against the use of apparel in this way, I have no formal power to deal with incidents like this. I must say, from a personal perspective, that I am disappointed that the Senate will be asked to consider implementing rules rather than rely upon the personal discretion and good judgement of all senators. Even if the Senate were to consider implementing such a rule, the ability of the chair to enforce the order is completely limited. Unlike the Speaker of the House of Representatives, the President of the Senate does not have the ability to independently remove any senator for a breach of the standing orders. This is something that is well known to senators but is not well known outside the Senate. The only course open to any occupant of the chair is to have the matter put to a resolution of the Senate and for the Senate to decide whether to suspend a senator under standing order 203. It was clear to me at the time that, on the last sitting day, I could not possibly have dealt with the matter in any other way because of the absence of any breach of the standing orders and the absence of any authority pursuant to the standing orders to take immediate action. Therefore, I have also asked the Procedure Committee to consider a possible amendment to the standing orders allowing the President or the Deputy President to enforce standing orders by suspending a senator from the chamber for a period of time.

I table my letter to the committee for the information of all senators. The Senate will in due course be informed of any outcomes when the Procedure Committee or I report back to the Senate. The Senate will be the ultimate arbiter as to whether or not any changes, should they be recommended, be adopted. I am sure that the Deputy President, who is Chair of the Procedure Committee, would willingly accept any suggestions or comments from any senator in relation to this matter. In the meantime, I again reiterate that the mode of dress is a matter for all senators but would ask that the respect and dignity of the Senate is forefront in the minds of each and every one of us when making such decisions. I thank senators.

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CHAMBER



## APPENDIX 4

### **Matters referred by the Senate – Parliamentary Code for respecting cultural diversity and proposal to amend standing order 193—Rules of debate**

1878

*No. 58—6 September 2017*

#### **21 Procedure—Standing Committee—References**

The Leader of the Australian Greens (Senator Di Natale) amended general business notice of motion no. 447 by leave and, pursuant to notice of motion not objected to as a formal motion, moved—

- (1) That the Senate acknowledges the proposal below for a code of conduct:

#### **PARLIAMENTARY CODE FOR RESPECTING CULTURAL DIVERSITY**

##### **PREAMBLE**

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

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

Members of Parliament recognise that their words and actions in the Senate and the House of Representatives influence issues relating to multicultural affairs, migration and citizenship, and can assist in guiding respectful public debate.

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

Members of Parliament recognise the need to exercise their valuable right of freedom of speech in a responsible manner and a failure to do so may have serious implications for individuals and groups of the Australian community and may diminish the social cohesion that is essential to our national character.

##### **THE CODE**

#### **1. Uphold the honour of public office**

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

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

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

#### **3. Respect Australians' diversity**

- (a) Members of Parliament recognise that Australia has been enriched by the diversity of colour, ethnic origin, culture and religious belief that exists within our nation.

- (b) Members of Parliament recognise that principles including respect for religious and cultural diversity, tolerance, and justice should be upheld in parliamentary debate in a respectful manner.

**4. Reject discriminatory or exclusionary statements**

- (a) Members of Parliament will not knowingly humiliate or degrade an individual or community based on their colour, national or ethnic origin, culture or religious belief.
  - (b) This includes acts which are intended to incite hatred or create fear of a community.
- (2) That this matter be referred to the Procedure Committee for consideration and report by Wednesday, 15 November 2017.

Question put and passed.

Senator Di Natale amended general business notice of motion no. 448 by leave and, pursuant to notice of motion not objected to as a formal motion, moved—

- (1) That the Senate notes that:
- (a) senators need to exercise their valuable right to freedom of speech in a responsible manner to ensure balanced discussion; and
  - (b) the actions of senators may have serious implications for individuals and groups within the Australian community and may diminish the social cohesion that is essential to our national character.
- (2) That the Senate notes the following proposal to amend standing order 193 and for this amendment to operate as a temporary order from the first sitting day in October 2017, until the second sitting day of 2018:

At the end of standing order 193, add:

- (4) Adverse reflections on an individual or community on the basis of colour, national or ethnic origin, culture or religious belief are highly disorderly.
  - (5) A senator shall contribute to debate in a manner which upholds the honour of public office and the Parliament.
- (3) That this proposal be referred to the Procedure Committee for consideration and report by Wednesday, 15 November 2017.

Question put and passed.