

# 22 Provisions governing the conduct of senators

There is no code of conduct applying to senators although, over the years, there has been a great deal of discussion about the effectiveness and desirability of such a code, including [Report No. 2 of 2012](#) of the Senators' Interests Committee.

This Guide collects constitutional provisions, rules of the Senate and statutory provisions which regulate the conduct of senators and which cover the types of matters which might otherwise be included in a code of conduct. Unlike standard codes of conduct, however, most of these provisions are enforceable and carry significant sanctions.

The guide includes only those provisions which apply particularly to senators and regulate conduct for which they are personally responsible. It does not include:

- rules which apply generally to all citizens
- procedural rules for the conduct of senators in debate (see [Chapter 31](#) of the standing orders and other orders of the Senate and [Guide No. 23](#)—Provisions governing the conduct of Senators in debate); or
- rules which determine entitlements (a field which is largely the responsibility of the Department of Finance and the Independent Parliamentary Expenses Authority, and the subject of separate guidance from those agencies ).

As noted in [Guide No. 20](#)—Parliamentary privilege, apart from the immunities conferred by parliamentary privilege on senators in the exercise of their duties, they are subject to the ordinary law like any other person.

## 1. The Constitution

### Disqualification

[Sections 44 and 45](#) of the Constitution provide for the disqualification of senators and candidates for election on various grounds, for which senators are personally responsible. These matters are detailed in [Guide No. 21](#)—Qualifications of senators and candidates for Senate elections.

### Loss of place for non-attendance

[Section 20](#) imposes a penalty of loss of place on a senator who is absent without leave from the Senate for two consecutive months.

### Penalty for sitting while disqualified

[Section 46](#) provides for a monetary penalty to be imposed on any person who continues to sit as a senator while disqualified. This provision has been modified by subsequent legislation in section 3 of the [Common Informers \(Parliamentary Disqualifications\) Act 1975](#). The penalty is \$200 per day.

## 2. The standing orders

### Conflict of interest on a committee

[Standing order 27\(5\)](#) prohibits a senator sitting on a committee if the senator has a conflict of interest in relation to an inquiry. The standing order applies to a situation in which a senator personally has a private interest in the subject of a committee's inquiry which conflicts with the duty of the senator to participate conscientiously in the conduct of inquiry. An example would be an inquiry involving a company in which a senator held shares. Under the standing order, declaration of the interest would not be sufficient.

### Giving evidence elsewhere

[Standing order 183](#) prevents a senator from giving evidence elsewhere about the proceedings of the Senate or a committee without the permission of the Senate. "Elsewhere" would include a court or tribunal or another House. [Section 16](#) of the *Parliamentary Privileges Act 1987* does not prevent reference to the proceedings of parliament in a court or tribunal, merely questioning of them.

## 3. Other orders of the Senate

### Senate Privilege Resolutions

#### Senators seeking or obtaining benefits

Paragraph 3 of [Privilege Resolution 6](#) provides that the Senate may treat as a contempt any seeking or obtaining by a senator of any benefit in return for the exercise of the senator's duties.

#### The responsibilities of freedom of speech

[Privilege Resolution 9](#) enjoins senators to use their great power of freedom of speech responsibly and with regard to several factors including the rights of others and the damage that can be done to reputations and the institution of parliament by allegations made in parliament.

### Resolutions on the registration of interests and gifts to the parliament

The Senate agreed to a [series of resolutions](#) relating to senators' interests in 1994, and a resolution on the declaration of gifts in 1997.

#### Registrable interests

Within 28 days of making and subscribing an oath or affirmation and 28 days after the first meeting of the Senate following the commencement of a new Senate term, senators are required to provide a statement of their registrable interests to the Registrar of Senators' Interests. Any alterations of interests must also be notified to the Registrar within 35 days of alteration occurring. All material is included in the [Register of Senators' Interests](#), which is published online.

Failure to comply with [these requirements](#) may be treated as a serious contempt. Registrable interests are described in [Resolution 3](#). [Resolution 2](#) extends the requirement to those interests, of which the senator is aware, of a senator's spouse, partner or dependent children. "Partner" is defined as a person who is living with another person in a *bona fide* domestic relationship.

#### Gifts

A separate resolution deals with the registration of gifts which are intended by the donor as gifts for the Senate or the parliament. [This resolution](#) is likely to be of most relevance to Senate office holders and leaders of parliamentary delegations.

## Resolutions relating to senators' qualifications

On 13 November 2017 the Senate established a [Citizenship Register](#). The order required senators to provide a statement in relation to citizenship to the Registrar of Senators' Interests within 21 days of making and subscribing an oath or affirmation and to provide any supplementary information if they discovered an inaccuracy.

On 3 April 2019 the Senate agreed to a resolution relating to senators' qualifications under sections 44 and 45 of the Constitution and established a [Register of Senators' Qualifications](#). The Register is to include material provided to the AEC by successful candidates, as well as material provided by senators who fill casual vacancies (see [Guide No. 21](#)—Qualifications of senators and candidates for Senate elections).

The order also establishes a process for dealing with any questions concerning a senator's qualification. Further information relating to the legislative requirements for qualification information is included, below.

## 4. Statutory provisions

### **Crimes Act 1914**

While most Commonwealth offences have been updated and codified in the *Criminal Code Act 1995* (see below), some offences remain in the [Crimes Act 1914](#).

Under [section 28](#) it is an offence to interfere with the exercise of a political right or duty. This is significant for senators as participants in political processes.

[Section 29](#) creates a general offence of destroying or damaging Commonwealth property which has significance for senators as custodians of public property.

### **Criminal Code Act 1995**

Many offences in the [Criminal Code Act 1995](#) apply to Commonwealth public officials, a term which is defined to include members of either House of the Parliament.

### **Corruption and bribery etc**

The old offence in the *Crimes Act 1914* of corruption and bribery of members of Parliament has been replaced by several offences in the *Criminal Code Act 1995* relating to Commonwealth public officials. These include:

- [section 139.2](#) – unwarranted demands made by a Commonwealth public official (an unwarranted demand being the equivalent of blackmail or extortion)
- [section 141.1](#) – bribery of a Commonwealth public official (subsection (3) makes it an offence to seek or obtain a benefit in return for the official's duties)
- [section 142.1](#) – corrupting benefits given to or received by a Commonwealth public official (a lesser offence than bribery and the equivalent of the old secret commissions); and
- [section 142.2](#) – abuse of public office (a new offence covering the use of influence, conduct or information to dishonestly obtain a benefit or cause detriment).

### **Fraudulent claims on the Commonwealth**

The *Criminal Code Act 1995* also includes a number of offences pertaining to fraudulent claims on the Commonwealth. These provisions are significant for senators as recipients and claimants of entitlements from the Commonwealth. They include:

- [section 132.8](#) (a broadly-phrased offence of dishonest taking or retention of Commonwealth property)

- [section 134.1](#) (obtaining property by deception)
- [section 134.2](#) (obtaining a financial advantage by deception)
- [section 135.1](#) (dishonestly obtaining gain in some form from the Commonwealth)
- [section 135.2](#) (obtaining a financial advantage – a lesser offence than in section 135.1); and
- [section 136.1](#) (making false or misleading statements in applications for Commonwealth benefits).

### The electoral process

The *Commonwealth Electoral Act 1918* (CEA) contains a number of provisions imposing obligations and prohibitions on participants in the electoral process. [Section 327](#), which prohibits interference with political liberty, may be thought to have particular significance for senators.

Several provisions relating to the qualification of candidates for election are also worth mentioning in addition to the Constitutional provisions referred to earlier.

A person who is a member of the House of Representatives or a State or Territory legislature must resign before being eligible to stand for the Senate ([s.43](#) of the Constitution, [s.164](#) of the CEA). A person may not make multiple nominations ([s.165](#) of the CEA).

A person who nominates for election to the Senate must comply with the requirements of the Constitution and the CEA, including the requirement to fill out a s.44 qualification checklist ([s.170A and 170B](#) of the CEA). This information is published online by the AEC, and presented to the Senate for tabling (see [Guide No. 21](#)—Qualifications of senators and candidates for Senate elections).

A person convicted of certain bribery or undue influence offences is disqualified from being chosen as a senator for two years after the conviction ([s.386](#) of the CEA).

### Need assistance?

For further assistance on any of the matters covered by this Guide, contact the Clerk of the Senate on extension 3350 or [clerk.sen@aph.gov.au](mailto:clerk.sen@aph.gov.au), or the Registrar of Senators' Interests on extension 3320 or [senators.interests@aph.gov.au](mailto:senators.interests@aph.gov.au)

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