

Guides

to Senate Procedure



This series is designed for those who require a practical understanding of the procedures governing the work of the Senate.

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1 Senate business documents

This guide describes the formal documents of record of the Senate and other documents used in the Senate in the course of business. Most of the documents are available [online](#) or in hard copy from the Senate Table Office (extension 3010 or table.docs@aph.gov.au).

1. The basics

The Senate's operating rules are contained in [standing orders](#) which govern the conduct of proceedings. The standing orders are supplemented by other orders and resolutions relating to:

- [parliamentary privilege](#)
- the [registration and declaration of senators' interests and senators' qualifications](#)
- the [broadcasting of Senate and committee proceedings](#)
- a number of [miscellaneous procedural matters](#); and
- orders of the Senate on the [Notice Paper](#).

Standing orders are made and amended from time to time by the Senate under the authority of [section 50 of the Constitution](#). Proposed changes to standing or other orders are usually examined first by the [Procedure Committee](#), which reports periodically to the Senate.

Standing orders cover a wide range of topics, from the election of the President to the composition of and rules for committees, the consideration of legislation, the rules of debate, the routine of business and the conduct of senators. They are supplemented by other, miscellaneous procedural orders. When a procedural question arises that is not covered by the standing or other orders, the President of the Senate makes a ruling. If the President's ruling is challenged, the Senate itself determines the question.

Within the framework of the routine of business set by the standing orders, the Senate's proceedings are guided by an agenda and recorded in minutes and in a transcript of debate. The agenda is called the *Notice Paper*, the minutes the *Journals of the Senate* and the transcript of debate the *Parliamentary Debates* or *Hansard*. Publication of all three documents is authorised by [standing order 43](#).

Notice Paper

The [Notice Paper](#) contains a list of business before the Senate on a particular day, and also includes known forthcoming business and other useful information. Business is placed on the *Notice Paper* in accordance with the standing orders. For example, items of business are grouped in their several categories which are listed in order of priority as required by [standing order 58](#) (see [Guide No. 4](#)—Categories of Business). [Standing order 62](#) specifies how orders of the day for debate on committee reports and government responses are to be listed on Thursdays (see also [Guide No. 11](#)—Opportunities for debating documents and reports). Notices of motion and orders of the day are listed separately and in accordance with standing orders [76](#) and [97](#). The contents page of the *Notice Paper* and the "[Guide to the Notice Paper](#)" give an overview of the structure of the document and provide assistance to users.

The “Red”

The [Order of Business](#) or the “Red” (after the red flash printed on its front page), is an informal version of the agenda. The Red includes invaluable information for senators and staff alike because, although it is only a guide, it sets out the full day’s likely program. Based on the routine of business for that day in the standing orders, the Red incorporates lists of business from the *Notice Paper* where appropriate and also includes known details of expected business, such as the titles of documents or reports to be tabled that day. Otherwise unscheduled items are also included where details are known sufficiently in advance, such as messages from the House of Representatives, the topics of ministerial statements, committee reports and government responses.

The Dynamic Red

The [Dynamic Red](#) is the most useful source of up to date information for people who need to monitor Senate business as it progresses throughout the sitting day. It provides information on the outcomes of the various items of business as the day progresses, together with links to relevant documents, including bills, amendments, running sheets, formal motions, and lists of clerk’s documents.

The Dynamic Red and [Senate Live](#), which shows only the item of business currently being considered, are available through [ParlWork](#). This site also provides access to the Order of Business, bills, notices of motion and questions on notice, and is designed to be used on tablets and smartphones as well as desktop and laptop computers.

Journals of the Senate

The Senate’s minutes, the [Journals](#), are the procedural record of the day, noting every decision, vote, tabled document and all other procedurally significant events. Each *Journal* concludes with a record of attendance to ensure compliance with [section 20 of the Constitution](#), which provides that a senator’s place becomes vacant if he or she is absent without leave for 2 months. The *Journals* are issued in proof form at the end of each sitting day and a final version is published some weeks later when the contents have been rigorously checked.

Senate daily and weekly summaries

The [summaries](#) are an informal resource designed to make the work of the Senate more widely accessible to external audiences. The information is categorised under general headings such as “Legislation”, “Committees”, “Documents”, “Other business” and “Statistics”, bringing together for easy reference items that would otherwise need to be collated from other parliamentary records and resources. The summaries are intended to be used online and contain links to primary sources such as the *Journals*, *Hansard* and committee reports, as well as to bill homepages, video replays, and other useful information on the Parliamentary website.

The Week Ahead

[The Week Ahead](#) is an online resource that outlines business scheduled for the upcoming sitting week. It is published one or two days prior to the commencement of sittings.

Hansard

[Hansard](#) is the edited transcript of proceedings in both Houses and their committees. For the Houses, proof Hansards are produced after each day’s sitting. [Hansard](#) is available in PDF or HTML format.

2. Documents relating to the legislative process

Bills

The central document for the purposes of the legislative process is the *bill*. A bill is a proposed Act of Parliament which becomes law only after it has been agreed to in identical terms by both Houses and assented to by the Governor-General. Most bills are proposed by the government of the day. As soon as bills are introduced, they are made available online. Each bill has a homepage, from which you can access the text of the bill and related documents, and follow the progress of the bill through the Parliament. These homepages can be accessed from the [Bills and Legislation](#) page, as well as from links in the Dynamic Red, Senate daily and weekly summaries, and the Parlinfo Search database. A complete list of all bills before Parliament for the calendar year and details of their progress is available from the Senate [bills list](#).

Explanatory memoranda

Each government bill is accompanied on introduction by an *explanatory memorandum* (or EM for short). This document is meant to be a user's guide to the bill which explains its general policy and financial impact, followed by detailed explanations of the individual clauses or items. Every EM must also include a statement providing an assessment of the bill's compatibility with Australia's human rights obligations.

If a bill is amended by the initiating House, a *revised* EM incorporating the changes is tabled when the bill is introduced in the second House.

If the interpretation of a provision in an Act arises in legal proceedings, courts may use the explanatory memorandum and other extrinsic aids, that is, materials which do not form part of the Act, to confirm or determine the meaning of the provision if there is any ambiguity. Other extrinsic aids include the *Journals of the Senate*, parliamentary debates, particularly the Minister's second reading speech, and relevant parliamentary committee or other reports that were tabled in Parliament when the bill was considered.

Amendments

Amendments are circulated on the authority of the senator or minister sponsoring them. Non-government senators are assisted by the Clerk Assistant (Procedure) in drawing up their amendments while government amendments are usually produced by the government drafters (the Office of Parliamentary Counsel). Amendments are usually produced as A4 documents with a unique identifying number in the top right hand corner, the name of the bill, the name of the senator moving them and the stage at which they are to be moved. Textual amendments are made in committee of the whole but a senator may also wish to amend the second reading motion (see [Guide No. 16](#)—Consideration of legislation). Links to amendments are available on the Dynamic Red, and committee of the whole amendments are also available from the relevant [bill's homepage](#).

Requests

Requests look very similar to amendments but they are procedurally different. Under the Constitution, there are some bills the Senate may not amend and some amendments the Senate may not make. The Senate *requests* the House of Representatives to make such amendments and withholds agreement to the third reading of the bill until an agreed outcome is achieved (see [Guide No. 16](#)—Consideration of legislation). An order of the Senate requires requests to be accompanied by a statement explaining why the amendments are framed as requests, and a statement by the Clerk of the Senate on whether the amendments would be regarded as requests under the precedents of the Senate.

Supplementary explanatory memoranda

Government amendments and requests are normally accompanied by a ‘supplementary EM’ explaining the proposed changes. The supplementary EM is usually tabled by a minister or assistant minister at the beginning of the committee of the whole stage. If more government amendments or requests are circulated, new supplementary EMs are prepared and are distinguished from earlier documents by the inclusion of terms such as “further” or “additional” (or both) in the title.

The running sheet

An informal but invaluable aid to proceedings in committee of the whole, the running sheet is a marshalled list of circulated amendments for the guidance of the chair and participating senators and their advisers. Running sheets give a brief description of each amendment or group of amendments and provide a suggested order of proceeding. They also highlight conflicts between circulated amendments and whether amendments are consequential on others being agreed to. They are prepared only if complex amendments are circulated by two or more senators. If further or revised amendments are circulated, running sheets are updated, if practicable, to reflect the changes. Running sheets are available online via the Dynamic Red. Copies may be obtained from the Senate Table Office or Chamber Attendants and are easily identified because they are printed on grey, A4 sized paper.

For further information about the legislative process, see [Guide No. 16](#)—Consideration of legislation, [Guide No. 17](#)—Debating legislation under time limits and [Guide No. 18](#)—Communication between the Houses – dealing with messages.

3. Procedural documents

Procedural scripts are provided to senators, as required, to assist them to transact business in the Senate. They may relate to the giving of notices of motion, the discovery of formal business (see [Guide No. 8](#)—Notices of motion), the introduction of bills (see [Guide No. 16](#)—Consideration of legislation), the suspension of standing orders (see [Guide No. 5](#)—Suspension of standing orders), the presentation of reports, or other common or uncommon procedures.

The Clerk Assistant (Table) prepares procedural documents for ministers and other government senators, and for senators transacting business on behalf of committees.

The Clerk Assistant (Procedure) prepares procedural documents for non-government senators.

A document, based on the Red, together with other briefings and updates as required, is also provided to the President, Deputy President and the Temporary Chairs of Committees to assist them in the chair.

Need assistance?

For assistance with any of the matters covered by this guide, government senators or their staff should contact the Clerk Assistant (Table), on extension 3020 or ca.table.sen@aph.gov.au; and non-government senators or their staff should contact the Clerk Assistant (Procedure), on extension 3380 or ca.procedure.sen@aph.gov.au.

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2 Rules of debate

Not all motions moved in the Senate may be debated and not everything said constitutes debate (for a list of non-debatable motions, see [chapter 10](#) of *Odgers' Australian Senate Practice*). However, most business in the Senate is transacted through decisions made after debate on motions moved by senators.

The rules of debate are set out in the standing orders of the Senate and provide the basis for the orderly conduct of the Senate. Where necessary, standing orders are interpreted and applied by the President, Deputy President or Temporary Chairs, and rulings of the Chair are an important supplement to the standing orders. Rulings may be challenged and are therefore subject to appeal to the whole Senate (see [standing order 198](#)).

1. The call

To speak, a senator must first seek the call, which is allocated by the President in accordance with [standing order 186](#) and the practice of the Senate, as set out in the Procedure Committee's *Second Report of 1991* (see [chapter 10](#) of *Odgers' Australian Senate Practice*). Senators are usually called from each side of the chamber alternately and the Leaders of the Government and Opposition are given the call before other senators. For many debates there is also an unofficial speakers' list compiled by party whips, to guide the chair.

2. The right to speak

A senator may speak once on a substantive motion. If an amendment to the motion is moved, a senator who has already spoken to the motion may speak again to the amendment (for more detail on speaking to an amendment, see [chapter 10](#) of *Odgers' Australian Senate Practice*). The senator who moves a substantive motion may exercise a right of reply which then closes the debate. The question (for instance, "That the motion be agreed to") is put by the chair at the close of the debate. There is no right of reply on a procedural motion, such as a motion to suspend standing orders. In committee of the whole senators may speak more than once to a question.

3. Time limits

Time limits apply to senators' speeches. Fifteen minutes is the maximum time for a speaker on any debate in the Senate. For special time limits, see the table at the end of this guide. If, when a senator is speaking, a point of order is taken or a quorum is called, the time taken for those procedures does not come out of the speaker's time. Clocks in the chamber show the time *remaining* for a senator's speech.

4. May speeches be read?

[Standing order 187](#) provides that speeches may *not* be read but Presidents have ruled that senators may use "copious notes" and that reading is permissible in some circumstances (see [chapter 10](#) of *Odgers' Australian Senate Practice*). The rationale of the prohibition on reading speeches is

that it prevents proper debate. A similar rationale lies behind the convention that, where possible, senators do not leave the chamber at the conclusion of their speeches but stay and listen to other contributions.

5. Quoting documents in speeches

A senator may read from a document for the purpose of quoting it in debate but may not use this technique to circumvent the rules of the Senate. For example, a senator may not quote a document in order to use unparliamentary language. When a senator quotes from a document, another senator, at the conclusion of the speech, may move that the document be tabled. If the senator quoting the document is a minister, he or she may prevent a motion for the tabling of a document by claiming that it is confidential ([standing order 168](#)).

6. Content of speeches

Speeches must be **relevant** to the motion being debated, except on the following motions:

- for an address-in-reply to the Governor-General’s speech on the opening of Parliament
- for the first reading of a bill which the Senate may not amend; and
- for the adjournment.

Speeches must not:

- be tediously repetitive; or
- anticipate debate on a matter which appears on the *Notice Paper*.

The rule against anticipation is interpreted liberally because the large amount of business on the *Notice Paper* could prevent discussion of virtually any matter.

The *sub judice* convention is a restriction on debate which the Senate imposes itself whereby debate is avoided if it could involve substantial danger of prejudice to proceedings before a court, unless the Senate considers that there is an overriding requirement for the Senate to discuss a matter of public interest. The convention is normally applied where:

- there is a likelihood of real prejudice to proceedings which have commenced
- the danger of prejudice outweighs the public interest in the matters being discussed; and
- the proceedings are before a magistrate or jury, rather than a judge (or judges) alone.

For further detail, see [chapter 10](#) of *Odgers’ Australian Senate Practice*.

7. Courtesies of debate

Senators are required to address the Chair. Any comments about other senators should be in the third person (“Mr President, the Senator opposite is mistaken to suggest. . .”). This is a long-established rule which facilitates orderly debate. Standing orders also encourage comity and mutual respect between the arms of government, the Commonwealth and state governments and the members of the Commonwealth, state and territory parliaments. It is not in order for senators to:

- speak disrespectfully of the King, the Governor-General or state governors; or
- use offensive words against, or impute improper motives to, either House of Parliament, state or territory Houses of Parliament, or members of those Houses or judicial officers.

It is also not in order to reflect on a vote of the Senate ([standing order 193](#)).

Presidents have often ruled on unparliamentary language, a term used to refer to remarks which are contrary to standing order 193. For more detail, see [chapter 10](#) of *Odgers’ Australian Senate Practice*.

8. Conduct during debate

The President is responsible for keeping order in the chamber. Senators must:

- acknowledge the Chair on entering and leaving the chamber (by a bow or nod); and
- be seated and be silent when the President rises during a debate.

Senators must not:

- walk or stand between the Chair and the senator speaking or between the Chair and the Table
- walk out of or across the chamber when the President is putting the question
- stand in the chamber unless seeking the call; or
- leave the chamber when a quorum has been called.

Eating, smoking, using noisy equipment, holding up placards or newspapers or displaying items with slogans etc have also been ruled as disorderly.

9. Interrupting the debate

A senator may interrupt another senator speaking only:

- to raise a point of order or privilege; or
- to call attention to the lack of a quorum.

Interjections are technically disorderly but may be tolerated in some circumstances. Points of order are usually determined immediately but the President may decide to determine a point of order at a later time. The President may also hear argument from senators on the point of order before determining it.

There is no ability to “gag” a senator (that is, move that a senator be no longer heard) under the procedures of the Senate but a motion that the question be now put (the “closure”) or a motion that the debate be adjourned may be moved by a senator who has not spoken in the debate at any time during a debate but not so as to interrupt a senator speaking. However, a minister may move either motion even if he or she has already spoken. These motions are determined immediately without debate or amendment.

10. Disorder

A senator who:

- persistently and wilfully obstructs the business of the Senate
- is guilty of disorderly conduct
- uses objectionable words and refuses to withdraw them
- persistently and wilfully refuses to conform to the standing orders; or
- persistently and wilfully disregards the authority of the chair

may be reported by the chair to the Senate (or “named”) ([standing order 203](#)). If the offence occurs in committee of the whole, the Chair of Committees may suspend proceedings and report the offence to the President. The reported senator is called upon to give an explanation or apology and a motion may be moved that the senator be suspended from the sitting of the Senate. Periods of suspension are covered by [standing order 204](#). Disorder is very rare in the Senate and is ultimately a matter for the whole Senate to determine.

11. New senators' first speech

Certain conventions apply to a new senator's first speech:

- the chamber is expected to be well attended
- the new senator is heard without interjection or interruption
- the new senator, in turn, should not directly criticise other senators or provoke interjections or points of order and
- following the speech the new senator is congratulated by other senators.

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Time limits on debate

Bills		
1st reading of non-amendable bill	15 mins	
2nd reading	15 mins	
In committee	10 mins	+ possible extension of 10 mins
3rd reading	15 mins	
Selection of Bills Committee—adoption of report	5 mins	(limit for debate: 30 mins)
Reference of a bill to a committee	5 mins	(limit for debate: 30 mins)
Committee reports and government responses		
Motions relating to a report on Tuesday, Wednesday or Thursday*	10 mins	(limit for debate: 1 hr*)
Resumption, including Auditor-General's reports (<i>Thursdays</i>)*	5 mins	(limit for debate: 1 hr*)
Motions moved by leave	10 mins	(limit for debate: 30 mins per motion, 1 hr for all motions)
Debate		
General	15 mins	
In committee	10 mins	
In reply	15 mins	
Documents		
Motion to take note (<i>Monday, Tuesday and Wednesday</i>)	5 mins	(limit for debate: 30 mins)
Resumption (<i>Thursday</i>)*	5 mins	(limit for debate: 1 hr*)
Motions moved by leave	5 mins	(limit for debate: 15 mins per motion, 30 mins for all motions)
Matters of public importance or urgency motions		
All speakers	5 mins	(limit for debate: 30 minutes each for up to two proposals)
Ministerial statements		
Motion to take note	10 mins	(limit for debate: 30 mins per motion, 1 hr for all motions)
Questions without notice		
Primary question	1 min	
Answering question	2 mins	
Supplementary question(s) (maximum of 2)	30 sec	
Answering supplementary	1 min	
Debate on motions relating to answers	5 mins	(limit for debate: 30 mins)
Senators' statements		
	2 mins 10 mins	Each day between 1.30 pm and 2 pm Wednesday between 12.15 pm and 1.30 pm
Suspension of standing orders		
	5 mins	(limit for debate: 30 mins)
Adjournment of the Senate		
Monday	10 mins	(limit for debate: 30 mins)
Tuesday	5 mins 10 mins	(no time limit for debate)
Wednesday	5 mins	(limit for debate: 30 mins)
Thursday	5 mins 10 mins	(limit for debate: 30 mins)

*1 hr combined debate on Thursday

3 Voting in the Senate

In the Senate, questions are decided by a majority. The President of the Senate has a deliberative vote on all questions, as does every other senator and, unlike the Speaker of the House of Representatives, does not exercise a casting vote. When the votes are equally divided, the question is lost. These rules are contained in [section 23 of the Constitution](#) which is designed to preserve the equality of each senator's vote.

1. Determining the vote

On the voices

Most votes in the Senate are determined on the voices. The chair puts the question, senators vote by calling "Aye" or "No" in turn, and the chair declares the result based on an assessment of whether the "ayes" or "noes" are in the majority. This assessment is based on a knowledge of how senators will vote.

By division

The chair's call may be challenged by senators calling for a division. If two or more senators declared by the chair to be in the minority challenge the chair's call, the chair informs the chamber that a division is required and orders that the bells be rung. The bells are rung for four minutes to enable senators to assemble in the chamber. The doors are then locked and the chair repeats the question, inviting those voting for the motion to sit to the right of the chair and those voting against the motion to sit to the left.

All senators in the chamber must vote except for the President or the Chair of Committees or, in practice, any temporary chair, who may choose not to vote when in the chair. Other senators have the option of abstaining by not attending the division.

The chair appoints *tellers* to count the vote, one for the "ayes" and one for the "noes". Tellers are usually party whips. The vote is recorded by the clerks at the table who cross off senators' names on a list as they are called by the tellers. One clerk records the "ayes", the other the "noes". When all names have been recorded, the tellers and clerks cross-check the results which are then announced by the chair. Lists of senators voting for and against a motion are reproduced in the *Journals of the Senate* and in *Hansard*.

The procedures for calling, voting in and recording divisions are contained in [standing orders 98 to 105](#). These procedures include the following rules:

- a division may be called for only by two or more senators who voted against the majority as declared by the chair
- a lone senator calling for a division may have his or her vote recorded in the *Journals* without a division
- senators must vote in a division in the same way as they voted on the voices
- senators must be present to vote

- a senator who calls for a division must not leave the chamber until the division has taken place
- the call for a division may be withdrawn by leave (unanimous consent of all senators present) at any time before the tellers are appointed
- senators must remain seated during a division; and
- if a point of order is taken during a division, senators may speak to it while seated.

By leave, a group of senators voting against a motion may have their votes recorded, as an alternative to a division.

The rationale for these rules is explained in [Chapter 11](#) of *Odgers' Australian Senate Practice*.

One minute divisions

If divisions are held successively, without intervening debate, the bells are rung for one minute for each successive division, rather than the usual four minutes. Although the chair, if aware of the possibility, generally warns senators if a one minute bell is likely, noise in the chamber often prevents senators from receiving the message. Therefore, if the bells ring soon after a division, senators who have left the chamber need to be aware that they may have only one minute to return. Television monitors in Parliament House display a time signal in the top right hand corner indicating how much time remains for a senator to reach the chamber. A caption also indicates whether the bells are ringing for a quorum or a division.

Pairs

The system of pairing is an unofficial system managed by the party whips to preserve the voting strengths of the parties in the Senate and prevent results by misadventure. A senator who is expected to vote on one side but who is absent is “paired” with a senator who is expected to vote on the other side and who is also absent, or who refrains from voting for the purpose. Pairing arrangements also apply to Senate vacancies. Because they are unofficial, pairing arrangements are not recorded in the *Journals*, but they may be included in the voting lists shown in *Hansard* (if the tellers provide the pairing arrangements to *Hansard* at the time of the division).

Errors, confusion or misadventure in divisions

If counting or recording errors or confusion occur which cannot be corrected (for example, by the tellers certifying that a pairing error occurred), another division is held. In practice, divisions may also be held again by leave if misadventure prevents a senator reaching the chamber and the result does not reflect the voting strengths of the parties and independents. Misadventure may include mechanical or electronic failures leading to malfunctioning bells or lifts and the senator concerned is usually called upon to explain the misadventure. The Senate invariably grants leave to ensure that questions are not determined by accidents of this sort.

2. Questions determined by special majorities

A simple majority is more than half of the senators who are present for the vote, while an absolute majority is more than half of all possible votes (39). Two types of decision require an absolute majority under the standing orders of the Senate. These are:

- decisions to suspend standing orders without notice (see [standing order 209](#)); and
- decisions to rescind (or “undo”) an order of the Senate (see [standing order 87](#)).

In practice, such votes are rare because the need to rescind orders rarely arises and the use of contingent notices for the suspension of standing orders obviates the need for an absolute majority in most cases (see [Guide No. 5](#)—Suspension of Standing Orders).

[Section 128](#) of the Constitution also requires that a bill to alter the Constitution be passed by an absolute majority of each House. Standing orders provide that senators will be notified before the Senate votes on the third reading of a bill to alter the Constitution, and a roll call is held to determine whether all senators are present. Modern practice is to dispense with some or all of the standing orders relating to the roll call (see [standing orders 106 to 110](#)). However, the bells are always rung and names of senators voting on the third reading of a constitutional alteration bill are recorded in the *Journals*, even if no division is called, to ensure that the constitutional requirements are met. If the bill goes to a referendum, official “Yes” and “No” cases may be authorised by the members of parliament voting for and against the bill, respectively, and distributed to electors by the Australian Electoral Commission.

3. Secret ballots

Most questions in the Senate are determined in public, as befits a representative democratic body. However, the standing orders provide for secret ballots to elect the President, Deputy President and members of committees where the number of candidates exceeds the number of positions available. See [chapter 11](#) of *Odgers’ Australian Senate Practice* for further details.

4. The effect of equally divided votes

The constitutional rules about Senate voting have a profound impact on the procedures of the Senate. In particular, they affect the legislative process and the form of the question put by the chair at the various stages of consideration of a bill.

The aim of legislative deliberation is to determine whether a bill, its several component parts and any textual amendments have the support of a majority of the Senate. Thus the questions for each major stage of consideration take the following form:

That this bill be now read a first/second/third time.

If the votes are equally divided, the question is lost and, lacking majority support, the bill proceeds no further.

During committee of the whole, detailed consideration of the bill takes place and amendments may be proposed. Amendments take one of two forms:

- proposals to omit clauses; or
- proposals to make textual changes by omitting words, inserting or adding words, or omitting **and** substituting words.

Where a clause is proposed to be omitted, the question takes the form:

That the clause stand as printed.

This question is designed to test whether a majority supports the clause remaining in the bill. An equally divided vote indicates the absence of a majority in support of the clause; the question is therefore lost and the clause is removed from the bill. Putting the question in an apparently more straightforward way:

That the clause be omitted

would produce a flawed result on an equally divided vote. On such an outcome, the *question* would be lost and a clause which did not enjoy majority support would *remain* in the bill. Therefore, this form of the question is not used except where the Senate is *requesting* the House of Representatives to make an amendment which the Constitution precludes the Senate from making itself (see [Guide No. 16](#)—Consideration of Legislation). Such *requests* must be supported by a majority.

The same principles apply to the consideration of messages from the House of Representatives disagreeing to amendments made by the Senate. See [Guide No. 18](#)—Communications between the Houses, for more detail.

Need assistance?

For assistance with any of the matters covered by this guide, government senators or their staff should contact the Clerk Assistant (Table), on extension 3020 or ca.table.sen@aph.gov.au; and non-government senators or their staff should contact the Clerk Assistant (Procedure), on extension 3380 or ca.procedure.sen@aph.gov.au.

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4 Categories of business

1. Why do I need to know about categories of business?

The priority that is given to items of business, and the place they are listed on the Senate *Notice Paper* and the Order of Business (“the Red”), are largely determined by the category of business into which an item falls. An understanding of the categories of business will assist in following the routine of business in the Senate each day and in understanding and using the Red and the *Notice Paper*.

2. What is the routine of business?

The standing orders of the Senate set out the rules by which the Senate operates. Included in these rules is the routine of business – that is, the times the Senate will meet, what business it will consider and in what order it will be considered. The times of meetings of the Senate in each sitting week are set out in standing order 55. The ordinary routine of business is spelled out in [standing order 57](#) and is summarised in the table at the end of this guide.

From the table, it can be seen that many items are given a particular place in the routine of business, either occurring at a stated time or following directly upon the conclusion of other items. These include question time, matters of public importance and urgency motions (see [Guide No. 9](#)—Matters of public importance and urgency debates), senators’ statements, and the presentation and consideration of various types of documents (see [Guide No. 11](#)—Opportunities for debating documents and reports). Peppered among these other items are references to “government business” and “general business”.

3. What is meant by ‘business’?

The use of the term “routine of business” refers to “business” in a broad sense but “business” also has a specific parliamentary meaning. When the standing orders refer to “the business of the day” it is a reference to the Senate considering items that fall within the specific categories discussed below. Consideration of “business” in this specific sense accounts for more than 70% of the Senate’s time.

Items are listed for consideration according to the category of business into which they fall. The rules relating to the various categories of business affect when and how items are dealt with.

4. Categories of business

There are three main categories of business:

- business of the Senate, which is defined in [standing order 58](#)
- government business, which is business initiated by a minister; and
- general business, which is all other business initiated by senators who are not ministers.

Business of the Senate includes disallowance motions ([Guide No. 19](#)—Disallowance), motions to refer matters to standing committees ([Guide No. 13](#)—Referring matters to committees) and orders requiring the presentation of committee reports. Motions concerning leave of absence for senators

and motions concerning the qualification of senators under the Constitution also fall within this category. The Senate can also order that other items be considered in this category on an ad hoc basis. For example, when a report of the Procedure Committee is presented it is now common for a motion to be moved proposing that consideration of the report be made a business of the Senate order for another day.

Government business is business initiated by (or on behalf of) a minister or an assistant minister. The majority of this business consists of government legislation. A minister or assistant minister can also move motions in a private – rather than a ministerial – capacity, in which case the business will fall into the appropriate category according to its subject matter. In recent years, around 40% of the Senate’s time has been spent on the consideration of government business.

General business consists of all other business initiated by senators who are not ministers or parliamentary secretaries and which doesn’t fall into any other category.

There is a fourth category of business – **matters of privilege** – which is not extensively dealt with here as it applies only to a very specific set of circumstances. It consists of proposals to refer matters to the Senate Committee of Privileges. An item will fall into this category only if the President has determined that a matter properly raised with him or her should have special priority (or “precedence”) under [standing order 81](#). Matters of privilege, when listed on the *Notice Paper*, have priority over all other business on the *Notice Paper*. These issues are dealt with comprehensively in [Guide No. 20](#)—Parliamentary Privilege.

5. Notices and orders

Within each category there are two types of business, notices of motion and orders of the day.

A **notice of motion** indicates a senator’s intention to move a particular motion on a particular day (see [Guide No. 8](#)—Notices of motion). Notices are placed on the *Notice Paper* under the relevant category of business in the order in which they are given. Notices of motion are usually considered before orders of the day, although the Government has the right to place its notices of motion and orders of the day on the *Notice Paper* as it sees fit. Where a motion is moved but not finally determined – that is, the debate is adjourned or interrupted by other business – the continuation of the debate on the motion becomes an order of the day for a later time.

An **order of the day** is an item of business that the Senate has set down for consideration on a particular day. The most common orders of the day are orders to continue a debate adjourned on a previous day, orders requiring the presentation of committee reports, orders to commence the next stage of consideration of legislation and orders for the consideration of messages received from the House of Representatives.

6. Precedence and the consideration of business

As a practical matter there is typically far more business listed on the *Notice Paper* than the Senate has time to consider. The standing orders therefore provide a set of rules for determining the priority (or “precedence”) which is given to the various categories of business.

As a general rule, items of business take precedence as follows:

1. Business of the Senate
2. Government business
3. General business.

A number of standing orders, however, refine these rules and create specific exceptions. These have effect as set out below.

Government business only ([standing order 57](#))

The routine of business sets aside the following times for “government business **only**”: Mondays from 10 am to 1.30 pm, Tuesdays from midday to 1.30 pm and Wednesdays and Thursdays after private senators’ bills (which are considered from 9am for 1 hour 10 minutes) until 12.15 pm and 11.15 am respectively. During this time the normal rules of precedence do not apply and government business will be called on regardless of any business of the Senate items or matters of privilege. Motions to vary the days and hours of sitting often specify that “government business only” be considered for particular hours or, indeed, days.

Business of the Senate items take precedence over all government business and general business ([standing order 58](#))

In the routine of business, government business is listed for consideration on Monday, Tuesday and Wednesday afternoons after question time and the consideration of certain other items, and on Thursday before question time. On these occasions government business will not be called on until any business of the Senate items listed for that day are determined (that is, voted upon, postponed to another day or adjourned).

Government business takes precedence over general business

In the ordinary routine of business, once any business of the Senate items are determined, government business will be called on for consideration. The only exception to this in the standing orders is that general business takes precedence over government business on Wednesday and Thursday mornings from 9 am for a period of 1 hour and 10 minutes (consideration of private senators’ bills), and on Thursday afternoons following the consideration of reports and documents ([standing order 57 and 59](#)).

Ministers have the power under [standing order 65](#) to arrange the order of government business on the *Notice Paper* from day to day as they see fit. They can also move motions (without leave) to rearrange the order in which government business items will be considered. These powers generally allow the Government to determine the priority of items for consideration during government business time.

Consideration of general business

Consideration of government business has priority over general business with the exception of certain times on Wednesdays and Thursdays, as described above. The particular items of general business to be considered at these times are determined between the various non-government senators and a motion to provide for their consideration is moved by the Manager of Government Business. If this did not occur, the Senate would consider general business during Thursday afternoon in the order in which it is listed on the *Notice Paper*.

Because general business has a lower priority than the other categories of business it is, in a practical sense, never called on in the ordinary course of business, except during the periods set aside on Wednesdays and Thursdays. Consequently, the majority of general business items considered by the Senate are brought forward using special procedures, notably the discovery of formal business for certain types of formal business ([Guide No. 8](#)—Notices of motion) and the moving of motions by leave or pursuant to a suspension of standing orders (see [Guide No. 5](#)—Suspension of Standing Orders).

Consideration of private senators' bills

As noted above, the Senate considers private senators' bills on Wednesdays and Thursday mornings, from 9 am for a period of 1 hour and 10 minutes. The particular bills to be considered at these times are determined in advance by the Senate, after consultation between the whips and other senators.

Need assistance?

For assistance with any of the matters covered by this guide, government senators or their staff should contact the Clerk Assistant (Table), on extension 3020 or ca.table.sen@aph.gov.au; and non-government senators or their staff should contact the Clerk Assistant (Procedure), on extension 3380 or ca.procedure.sen@aph.gov.au.

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The ordinary routine of business in the Senate

as set out in standing order 57 and related orders

MONDAYS	TUESDAYS	WEDNESDAYS	THURSDAYS
Senate meets from 10 am	Senate meets from 12 pm	Senate meets from 9 am	Senate meets from 9 am
<p>10 am</p> <ul style="list-style-type: none"> Private senators' bills <p>12.20 pm</p> <ul style="list-style-type: none"> Government business only <p>1.30 pm</p> <ul style="list-style-type: none"> 2 minute statements <p>2 pm</p> <ul style="list-style-type: none"> Questions Motions to take note of answers Petitions Notices of motion Placing of business Formal business MPI or urgency motion Consideration of documents tabled earlier in the day Ministerial statements Committee memberships Messages Business of the Senate (if any)* Government business* <p>8 pm</p> <ul style="list-style-type: none"> Adjournment proposed <p>8.30 pm</p> <ul style="list-style-type: none"> Adjournment. 	<p>12 pm</p> <ul style="list-style-type: none"> Government business only <p>1.30 pm</p> <ul style="list-style-type: none"> 2 minute statements <p>2 pm</p> <ul style="list-style-type: none"> Questions Motions to take note of answers Petitions Notices of motion Placing of business Formal business MPI or urgency motion Consideration of documents tabled earlier in the day Tabling and consideration of committee reports Ministerial statements Committee memberships Messages Business of the Senate (if any)* Government business* <p>7.30 pm</p> <ul style="list-style-type: none"> Adjournment proposed Adjournment. 	<p>9 am</p> <ul style="list-style-type: none"> Private senators' bills Government business only <p>12.15 pm</p> <ul style="list-style-type: none"> Senators statements <p>1.30 pm</p> <ul style="list-style-type: none"> 2 minute statements <p>2 pm</p> <ul style="list-style-type: none"> Questions Motions to take note of answers Petitions Notices of motion Placing of business Formal business MPI or urgency motion Consideration of documents tabled earlier in the day Tabling and consideration of committee reports Ministerial statements Committee memberships Messages Business of the Senate (if any)* Government business* <p>7.30 pm</p> <ul style="list-style-type: none"> Adjournment proposed <p>8 pm</p> <ul style="list-style-type: none"> Adjournment. 	<p>9 am</p> <ul style="list-style-type: none"> Private senators' bills Government business only <p>11.15 am</p> <ul style="list-style-type: none"> Petitions Notices of motion Placing of business Formal business Committee memberships Messages Business of the Senate (if any) Government business* <p>12.15 pm</p> <ul style="list-style-type: none"> Non-controversial government business only <p>1.30 pm</p> <ul style="list-style-type: none"> 2 minute statements <p>2 pm</p> <ul style="list-style-type: none"> Questions Motions to take note of answers Reports and documents <ul style="list-style-type: none"> Tabling and consideration of committee reports Consideration of documents Consideration of committee reports, government responses and Auditor-General's reports Ministerial statements General business debate <p>5.30 pm</p> <ul style="list-style-type: none"> Adjournment proposed <p>6 pm</p> <ul style="list-style-type: none"> Adjournment.

* Matters of privilege on the Notice Paper take precedence

5 Suspension of standing orders

The Senate normally conducts its business in accordance with standing orders. These are procedural rules to facilitate the orderly conduct of business and protect the rights of individual senators. They are made by the Senate under the authority of [section 50 of the Constitution](#).

At any time the Senate may decide to vary the way it does business, perhaps by making temporary changes to the standing orders or by overriding or adding to them for a particular purpose. These variations are made by a decision (or resolution) of the Senate following a motion (or proposal). Motions usually require notice (see [Guide No. 8](#)—Notices of Motion).

On occasion, however, the Senate may decide that there is an urgent need to override the standing orders to take action that the standing orders would otherwise prevent. In these circumstances, there are two ways in which the Senate dispenses with its normal rules in order to take a different course of action:

- by granting leave; or
- by a motion to suspend the standing orders.

1. What is leave?

Leave is the unanimous consent of all senators present in the chamber and is determined by the Chair after he or she ascertains whether there is any objection to a particular course of action being followed. A senator may object by simply saying “no” when the chair asks “is leave granted?” Major and minor departures from the standing orders may occur with leave, provided that there is unanimous consent. By convention, requests for leave are generally negotiated between the whips of the different parties in the Senate and independent senators.

2. In what circumstances are standing orders suspended?

When leave is either unlikely or refused, a senator may move for standing orders to be suspended to enable a course of action to be followed. This requires the agreement of a majority of the Senate ([standing order 209](#)). If such a motion is moved **without notice**, it requires the agreement of an absolute majority of the whole Senate (39 senators). **With notice**, it requires only a simple majority (a majority of senators voting).

A motion to suspend standing orders is often connected with a proposal to rearrange the Senate’s business, including for the purpose of initiating a completely new item of business. Although a minister may move a motion without notice at any time in connection with the conduct of business ([standing order 56](#)), other senators may not. In some cases, a suspension of standing orders may be designed to give other senators the same powers as ministers to rearrange business. But not even a minister may initiate completely new business without notice, so ministers may sometimes move for the suspension of standing orders to achieve this.

If a motion to suspend standing orders is moved during the consideration of a matter, including in committee of the whole, it must be relevant to the matter. For example, if the Senate is considering a bill, a senator may not move to suspend standing orders to bring on another item, unless the debate on the bill is first concluded or adjourned.

Because it is more difficult to obtain the agreement of an absolute majority of the Senate, most motions to suspend standing orders are moved by a special type of notice called a **contingent notice**, which means they can be agreed to by a more easily achievable simple majority.

3. Contingent notices

A contingent notice is a notice that a particular motion will be moved when a certain event happens or a certain stage in the proceedings is reached. There are two types of contingent notice: specific and general.

Specific contingent notices seek to suspend any standing orders that would prevent an action occurring, for instance:

- the standing orders that would prevent a senator moving an amendment
- the standing orders that would prevent a senator making a statement; and
- the standing orders that would prevent a notice being taken as formal notice.

These require two procedural steps. The first step is to suspend standing orders and, if successful, the second step is to take the substantive action (for example, to move the amendment, make the statement or to move the motion as formal). An example of a specific contingent notice is as follows:

To move (contingent on any senator being refused leave to table a document in the Senate)—
That so much of the standing orders be suspended as would prevent the senator moving that the document be tabled.

General contingent notices are about reorganising the business before the Senate, either to give priority to particular items on the Notice Paper or, similarly, to bring on an entirely new matter. They are drafted in general terms to try to capture the broadest possible range of circumstances. General contingent notices require an extra procedural step.

The first step is to suspend standing orders so that a procedural (or precedence) motion can be moved. The second step sets out how the substantive matter will be dealt with (eg, that it will have precedence until determined). The second motion may be debated, although it rarely is, as it is simply a means to the desired end. The third step is proceeding with the substantive matter. This third step may involve the chair calling on the substantive business that has been given precedence (if it is listed on the Notice Paper) or calling a senator to move the substantive motion.

Examples include:

- suspending standing orders, to allow a procedural motion to be moved, to give a private senators' bill precedence over all other business until determined; or
- suspending standing orders, to allow a procedural motion to be moved, to require a new motion changing the Senate's hours of meeting and routine of business to be voted on without amendment or debate.

A general contingent notice commonly lodged by party leaders and independent senators is as follows:

To move (contingent on the Senate on any day concluding its consideration of any item of business and prior to the Senate proceeding to the consideration of another item of business)—
That so much of the standing orders be suspended as would prevent the senator moving a motion relating to the conduct of the business of the Senate.

A motion to suspend standing orders may be debated for up to 30 minutes with each speaker allowed up to 5 minutes. As it is a procedural motion, the mover does not have a right of reply (see [Guide No. 2](#)—Rules of Debate). Under a rule first introduced in 2018, suspension motions moved in connection with formal business are put without debate.

It has been ruled that a contingent notice may be used only once by any senator on any one occasion (see [chapter 8](#) of *Odgers' Australian Senate Practice*).

Contingent notices remain on the *Notice Paper* and are thus available again for future use after they are moved unless they are withdrawn by the senator who gave them or unless they are "spent".

A contingent notice is spent (of no further use) if the contingency, or event on which it depends, has passed.

Contingent notices are commonly given to enable senators to move for the suspension of standing orders in the following circumstances:

- between items of business—to rearrange business or to provide for a completely new item of business (such as a censure motion, for example)
- on any senator objecting to a motion being taken as formal—to enable the motion to be moved immediately and determined without debate
- on any senator being refused leave to move an amendment to a formal motion—to enable the amendment to be moved
- when a minister moves that a bill is urgent under [standing order 142](#) (the “guillotine”)—to provide for that motion to be debated
- when a minister moves a motion to allot time for an urgent bill—to provide for an unlimited debate on that motion
- when the time allotted to an urgent bill expires—to provide for the time to be extended
- when a motion to debate a matter of urgency under [standing order 75](#) is moved—to enable an amendment to be moved to the motion
- at placing of business—to rearrange the order of business on the *Notice Paper*
- at the end of question time—to move that question time be extended until 30 questions have been asked and answered
- on any senator being refused leave to make a statement—to enable the senator to make the statement; and
- on any senator being refused leave to table a document—to move that the document be tabled.

Using these notices, and with the agreement of a simple majority, senators may in urgent cases move for the suspension of standing orders to do a range of things that would otherwise be prevented by the standing orders.

4. What is the effect of suspending standing orders?

Standing orders are suspended only for the particular purpose mentioned in the motion ([standing order 210](#)). So, for example, if a senator who is refused formality for a general business notice of motion successfully follows the 2-step process referred to above, the only standing orders which are suspended are those which would prevent the motion being moved and having precedence. All other standing orders, such as those relating to the rules of debate (see [Guide No. 2—Rules of Debate](#)), continue to apply.

A suspension of standing orders lasts for the period specified in the relevant motion. In a rearrangement motion, for example, moved after a suspension of standing orders has been agreed to, the item of business to be given precedence is usually given precedence over all other business **that day** until determined (voted on). If that item is not resolved by the end of that day, then it has no special precedence on the following day unless a new suspension is agreed to. Precedence may also be specified to last over a period of days. Private senators’ bills have occasionally been given precedence over government business until proceedings on the bills were concluded.

Need assistance?

For assistance with any of the matters covered by this guide, government senators or their staff should contact the Clerk Assistant (Table), on extension 3020 or ca.table.sen@aph.gov.au, and non-government senators or their staff should contact the Clerk Assistant (Procedure), on extension 3380 or ca.procedure.sen@aph.gov.au.

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6 Questions

1. Questions seeking information

One of the ways in which senators may seek to hold the executive government accountable for its actions is by questioning ministers. Numerous opportunities exist for senators to ask questions of ministers, most notably:

- in the Senate chamber, during question time
- through written questions placed on the Senate *Notice Paper*
- during committee hearings, especially during the consideration of estimates; (see [Senate Brief No. 5](#)—Consideration of Estimates by the Senate’s Legislation Committees); and
- during the *committee of the whole* stage of the legislative process (see [Guide No. 16](#)—Consideration of Legislation).

This guide deals with questions asked during question time and questions placed on notice.

Questions may be addressed to a minister relating to public affairs or matters of administration for which the minister is responsible, or in respect of which the minister represents another minister. Each minister in the House of Representatives is represented by a minister in the Senate. A list of ministers and the portfolios they represent is published in the *Notice Paper*. Questions may not be addressed to assistant ministers.

Questions may also be addressed to the President in relation to matters for which he or she has responsibility.

Most questions, however, are put to ministers.

Provisions relating to questions are contained in [standing order 72 to 74](#). Also see [chapter 19](#) of *Odgers’ Australian Senate Practice, Relations with the Executive Government*.

2. Rules for questions

The rules for questions are contained in [standing order 73](#).

These rules are interpreted by the chair so as not to restrict unduly the ability of senators to ask questions on a wide variety of subjects. For instance, although questions may not ask for a statement of government policy, it is in order for a question to seek an explanation of government policy or the clarification of a statement made by a minister. A question inviting a minister to comment on opposition policies is strictly out of order, although questions seeking the minister’s knowledge of how other policy proposals would affect matters within that minister’s responsibility have been ruled in order.

The prohibition on questions containing statements of fact, arguments, inferences, imputations etc. recognises that the purpose of a question is to seek information and not to provide a senator the opportunity to make a statement. This reasoning also underlies a long-standing prohibition on the use of quotations in questions.

In practice, the chair has discretion to allow the inclusion in a question of so much material as is necessary to make the question clear.

3. Question time

The operation of question time is governed more by agreement and established practice than by the standing orders. The current practice is for questions to be asked and answered each sitting day from 2 pm ([standing order 57](#)—Routine of business) for a period of approximately one hour.

The opportunity to ask questions is provided for in [standing order 72\(1\)](#), but there is no procedural rule requiring that ministers answer questions. It has long been established that there is no obligation upon a minister to answer a question – indeed the answering of questions has sometimes been referred to as a “courtesy”. In practice, however, there is a political cost borne by a government or a minister in not answering questions – and a political benefit in answering them deftly.

Question time is drawn to a close each day by the Leader of the Government in the Senate asking that further questions be “placed on notice” – an invitation for questions to be submitted in writing. The various party leaders and independent senators have contingent notices which may be moved, seeking the Senate’s agreement to move that question time be extended on any day *until 30 questions, including supplementary questions, have been asked and answered*. These contingent notices are rarely used, however, the last occasion being 30 August 1995.

Motions to extend question time have occasionally been proposed as punitive remedies when ministers have failed to comply with orders of the Senate. [On 19 October 1999](#), for example, question time was extended on several days in response to a refusal by a minister to produce a document in accordance with an order of the Senate ([Guide No. 12](#)—Orders for production of documents).

Allocation of questions

The standing orders provide that a senator seeks the call (for instance, to ask a question) by rising in his or her place to address the President. In practice, however, the allocation of questions is determined by agreement. Current practice adopts the *principle of proportionality* endorsed by the Procedure Committee in its second report of 1995; that is, the chair seeks to allocate questions between parties and independent senators as nearly as practicable in proportion to their numbers in the Senate.

Time limits for questions and answers

Time limits apply to the asking and answering of questions under [standing order 72\(3\)](#):

- the asking of a question may not exceed one minute
- the answering of a question may not exceed two minutes
- two supplementary questions are allowed, each not exceeding 30 seconds; and
- the answering of a supplementary question may not exceed one minute.

Time limits were first imposed in 1992 following concerns about the length of ministers’ answers and a general discontent with the conduct of question time.

Supplementary questions

Following a minister’s reply, a senator may ask up to two supplementary questions. Supplementary questions must relate to or arise from the answer to the original question.

Answers to questions

In answering a question a minister may not debate it. Rather, an answer must be confined to providing the information sought. In all cases the answer must be directly relevant to the question (see [standing order 72\(3\)\(c\)](#)). The President may require that ministers’ answers be relevant, but cannot tell ministers how they should respond to questions.

Taking questions on notice and providing further answers

Ministers may, in responding to questions during question time, elect to take a question (or part of a question) on notice. This indicates that the minister will seek further information and provide it to the Senate at a later time. It is established practice for ministers at the end of question time to make additional responses to questions taken on notice in this way. These responses, unless brief, are typically incorporated in *Hansard*, with the leave of the Senate, rather than being given orally.

Motions to take note of answers

At the end of question time motions may be moved, without notice or leave, to take note of answers given during question time, including further answers provided by ministers. A senator speaking to such a motion may speak for 5 minutes, with the total time on any given day not exceeding 30 minutes ([standing order 72\(4\)](#)). The call to speak during this time is normally allocated on a similar basis to the allocation of questions at question time.

4. Questions on notice

Questions asked in the Senate at question time are asked *without notice*, although a senator may informally advise a minister of the subject of a proposed question in advance. Where a senator seeks a detailed answer to a question, particularly where statistical information is sought, that question is more appropriately submitted in written form and placed *on notice*.

A senator places a question on notice by signing the written question and delivering it to the Senate Table Office. A senator may submit questions on behalf of another. There is no limit on the number of questions a senator may submit.

Table Office staff examine questions for conformity with the standing orders before adding them to the online [questions on notice searchable database](#). Any problems with questions are discussed with the senator's office. If they cannot be resolved they are referred to the President for determination. Senators should submit their questions using the questions on notice form on the senators' intranet ([Senate Connect](#)). Alternatively, senators may provide a signed hard copy to the Table Office, accompanied by email to: table.questions.sen@aph.gov.au.

Ministers' offices and government departments use the database to identify questions asked. Questions placed on notice when the Senate is not sitting are also forwarded to ministers' offices, allowing relevant action to commence. This assists ministers in providing timely responses to questions.

Answers that have been approved by the responsible minister are delivered to the Clerk. In practice, answers are lodged with the Table Office, which supplies the senator who asked the question with a copy of the reply and arranges for the answer to be added to the database. Publication of the answer is authorised on its provision to the senator ([standing order 74\(3\)](#)).

The 30-day rule

A senator who places a question on notice and does not receive a reply within 30 days may after question time on any day seek from the relevant minister in the Senate an explanation of why an answer has not been provided ([standing order 74\(5\)](#)).

If the minister provides an explanation, the senator may move without notice *that the Senate take note of the explanation*.

If the minister fails to provide a satisfactory explanation, the senator may move, without notice, *a motion with regard to the minister's failure to provide either an answer or an explanation*. The motion moved at this stage may be for any relevant purpose – for instance, a motion to order that the answer be tabled by a specific date, or a motion to censure the minister for the delay in answering.

It is common practice for a senator to advise a minister informally of his or her intention to seek an explanation under the 30-day rule, to improve the chances of receiving an answer or a satisfactory explanation. This is especially the case where the minister represents a minister in the House of Representatives and may need to seek an explanation from that minister's office.

This process is not available once an answer to the question is provided.

Details of questions that have remained unanswered for more than 30 days are available from the online database and are also published in the [Notice Paper](#). The 30-day period is counted from the day the question is placed on notice, not the date of publication.

The same process applies for questions placed on notice during estimates hearings which remain unanswered after the date set by the relevant committee to answer the question. The operative date for each committee for each round of estimates is recorded in the [Notice Paper](#).

The effects of prorogation on questions

One of the effects of prorogation of the Parliament during an election period is that all business on the *Notice Paper* remains current until the day before the next sitting, at which time it lapses. This has the following consequences:

- any outstanding questions on notice should be answered and sent to the Table Office for processing. Advice to this effect is routinely forwarded to government departments at the start of the election period, and
- any questions remaining unanswered when business lapses need to be resubmitted in order to again appear in the database. Table Office staff write to senators during the election period, inquiring whether they wish to renew such questions when sittings resume.

Questions submitted after a prorogation and before the new sittings will be processed and added to the database on the first sitting day, and the count for the 30-day rule is taken to begin on this day.

Need assistance?

For assistance with any of the matters covered by this guide, government senators or their staff should contact the Clerk Assistant (Table) on extension 3020 or ca.table.sen@aph.gov.au; and non-government senators or their staff should contact the Clerk Assistant (Procedure) on extension 3380 or ca.procedure.sen@aph.gov.au.

Questions on notice can be lodged with the Senate Table Office (SG 25) and by email (table.questions.sen@aph.gov.au). Inquiries relating to questions on notice should be directed to the Director (Journals and Notice Paper) on extension 3015.

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7 Petitions

Individuals and organisations may seek to have petitions presented to the Parliament. Petitions generally express views on matters of public policy and ask the Parliament to take—or, in some cases, *not* to take—a particular course of action.

1. Petitioning the Senate

Each House of the Parliament has its own rules that documents must follow in order to be accepted as petitions. To be accepted by the Senate, a petition:

- must be addressed to the Senate
- must be presented by a senator; and
- must be certified by the Clerk as being *in conformity* with the standing orders; in particular, it must contain a request for action by the Senate or the Parliament.

Petitions must be addressed to the Senate

The Senate can only accept petitions that are addressed to the Senate. The Senate cannot accept petitions addressed, for instance, to the Government or to a particular Minister. The traditional form of address is shown on the sample petition at the end of this Guide, though the particular words are not important, as long as the petition is clearly addressed to the Senate.

Petitions must be presented by a senator

Only senators may present petitions, so a person wishing to petition the Senate must forward the petition to a senator and ask the senator to present it. While there is nothing in the rules of the Senate to compel a senator to present a petition, most senators take the view that they should seek to present any petition forwarded to them, even if the views represented in the petition do not reflect the views of the senator presenting it.

Before presenting a petition a senator must place his or her name on its *front page* (usually at the top of the page), together with a statement of the total number of signatures. Note that the senator does not sign the petition with the other signatories.

Petitions must be lodged with the Clerk for presentation. This is done by delivering the petition to the Senate Table Office in SG 25, which arranges the presentation of petitions. Petitions should be lodged with the Table Office by 5 pm for presentation the following sitting day. However, on Tuesdays when the Senate commences at midday, petitions will be accepted until 9am that morning.

On each sitting day, at the time provided in the routine of business ([standing order 57](#)), the Clerk announces that petitions have been lodged for presentation. A summary of the petitions being presented is available from the Dynamic Red, or may be obtained from the chamber attendants. These petitions are taken to have been received by the Senate, although any senator may move that a petition not be received.

Petitions must conform with the standing orders

Petitions must be certified by the Clerk as being in conformity with the standing orders before they can be presented. In summary:

- a petition must contain a request for action by the Senate or the Parliament—it should not merely express a point of view
- a petition must be legible and must be in English or accompanied by a translation
- all signatures must be original and must be written on a page bearing the full text of the petition—photocopies of signatures, for instance, cannot be accepted; and
- a petition must be respectful, decorous and temperate in its language—language considered unparliamentary in the Senate would be unacceptable in a petition.

The relevant rules are contained in [standing orders 69 to 71](#). If there are any concerns about the conformity of a petition, the Table Office (x3010) will provide relevant advice to the senator lodging it.

2. When is a petition not a petition?

Occasionally a document will be lodged as a petition which does not qualify as a petition under the standing orders, for instance because it is not addressed to the Senate or because it does not contain original signatures. In those circumstances the Clerk cannot certify the document as a petition and it cannot be presented in the usual way.

The President may nonetheless approve the presentation of the document as a petition if the President is satisfied that *exceptional circumstances* warrant its presentation ([standing order 69\(8\)](#)). This test of exceptional circumstances is taken seriously. President Reid ruled that it would defeat the purpose of the standing order if non-qualifying documents were routinely allowed to be presented:

Circumstances which seem to me not to qualify as exceptional circumstances are, for example, that there are a lot of signatures attached to the petition, that a great deal of trouble has been taken to collect the signatures, or that the subject matter of the petition is an important public issue.

Circumstances which would seem to qualify as exceptional might be, for example, that the subject matter of the petition is immediately before the Senate, that the petition refers to facts of which the Senate might not otherwise be aware, that the petition refers to a serious grievance of injustice to which the Senate should give immediate attention, or that there is no other way in which the document can be treated so as to bring it to notice.

A more common remedy is for a senator to seek the leave of the Senate to table the document, for instance during a relevant debate, during senators' statements, or during the adjournment debate (see [Guide No. 10](#)—Tabling of Documents). A document tabled in this way is *not* received by the Senate as a petition, and the text of the document is not automatically incorporated in Hansard.

3. Online petitions

The Senate standing orders make no special reference to *online* or *electronic* petitions; they apply to all petitions whether written on paper or in cyberspace.

Although it is in order to lodge a petition for which the signatures have been collected by e-mail, the common practice of copying and forwarding e-mails to multiple addressees, and the tendency of recipients to add comments (thereby changing the *text* of the petition) makes this problematic. The most successful approach has been to post the text of the petition on an Internet page and invite people to *sign* the petition by submitting their names and e-mail addresses.

Petitions that are posted and signed online are accepted if the senator certifies that they have been duly posted with the text available to the signatories. In presenting the petition, the senator lodges a paper document containing the text of the petition and a list of the signatures submitted. Alternatively, if an electronic petition is presented, the senator provides a list of email addresses of signatories.

4. What happens to petitions?

Petitions presented to the Senate are brought to the notice of the appropriate Senate committee. A committee may seek a reference from the Senate on the issues contained in a petition (see [Guide No. 13](#)—Referring matters to committees), or may use the petition as evidence in a related inquiry.

Senators sometimes refer to petitions in debate in the Senate. The full text of each petition received is printed in Hansard.

5. Petitions and privilege

The presentation of a petition to the Senate is a proceeding in Parliament and is protected by parliamentary privilege. The publication of a petition *before* presentation is not similarly protected. For further information see [chapter 2](#) of *Odgers’ Australian Senate Practice*, under “Circulation of Petitions”.

Need assistance?

Petitions may be lodged with the Senate Table Office in SG 25. Inquiries relating to the presentation of petitions should be directed to the Table Office on extension 3010. Further information is available [online](#), and information about petitions addressed to the House of Representatives can be found in House of Representatives [Infosheet No. 11](#).

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Last reviewed: July 2022

Sample format of a petition

To the Honourable President and members of the Senate in Parliament assembled:

The petition of the undersigned shows:

(state grievance or subject of complaint)

Your petitioners ask that the Senate:

(state the redress or action desired)

Name	Address	Signature

8 Notices of motion

1. What is a notice of motion?

All decisions of the Senate begin as motions moved by senators. The first step is usually for a senator to **give notice** of his or her intention to move a motion. A notice of motion therefore signals a potential decision of the Senate.

Notice is required for all motions except where the standing orders provide otherwise. (For a list of motions not requiring notice see [chapter 9](#) of *Odgers' Australian Senate Practice*.)

Notices of motion may seek the Senate's endorsement of an issue of domestic or foreign policy or recognition of a particular achievement or event. Others relate to the machinery of Senate business and include notices for the introduction of bills or relating to the Senate's routine of business. A third category proposes an exercise of the Senate's powers to, for example:

- refer a matter to a committee for inquiry
- establish a select (or special purpose) committee
- require ministers to place certain documents or information on the public record
- require the appearance of witnesses before committees; and
- disallow an instrument of delegated legislation (see [Guide No. 19](#)—Disallowance).

2. How is notice given?

Each day time is set aside for giving notice. This occurs at approximately 3.30 pm on Mondays, Tuesdays and Wednesdays, and at approximately 11.15 am on Thursdays. A senator gives a notice:

- by handing a signed copy to the Clerk or lodging it with the Sub-Table Office, before the time for giving notices; or
- by seeking the call in the Senate at the time for giving notices, giving the notice orally and handing a signed copy to the Clerk.

One category of notices is not subject to the usual time limit: a notice of motion to refer a matter to a legislative and general purpose standing committee may be handed to the Clerk at any time before the adjournment is proposed, or given orally in the Senate between items of business. Notices are published in the aptly-named [Notice Paper](#).

The purpose of a notice is to give advance warning of a proposed decision. Therefore, a notice has no effect, and cannot be used, on the day it is given.

3. Are there rules about the content of notices?

The standing orders set out the rules for notices ([standing order 76](#)). In essence, a notice must:

- be legible and signed by the senator giving it
- show the day proposed for moving the motion—usually the next sitting day, a specific date, a number of sitting days into the future or at the occurrence of a specific contingency (see below)
- consist of a clear and succinct proposed resolution or order of the Senate
- relate to matters within the competence of the Senate

and must not:

- contain statements, quotations or other matter not strictly necessary to make the proposed resolution or order intelligible
- for a general business notice of motion—exceed 200 words, unless it is a motion:
 - (a) for the consideration of legislation or the conduct of Senate or committee business (including the appointment of a select committee), or
 - (b) proposing an order for the production of documents.

Notices are edited for the *Notice Paper* and the President may delete extraneous matter, require a senator to reframe a notice if it does not comply with the standing orders, or ask the Clerk to divide it into two or more notices if it contains matters not relevant to each other, including to ensure that motions meet the definition of a particular category of business or are eligible for consideration as formal business. Notices may be given in general terms with the complete version being handed to the Clerk. Two or more senators may give the same notice.

4. Contingent notices

Contingent notices specify a set of conditions under which a senator may move a certain motion: if **an event** happens, Senator A may move **a motion**. Most contingent notices provide for standing orders to be suspended to enable a senator to take an action that the standing orders would otherwise prevent. An absolute majority of the Senate (39 senators) must agree to a suspension of standing orders where it is moved without notice. Where notice has been given, however, only a simple majority is required (a majority of senators voting). In most cases, senators use contingent notices to attract the lesser requirement of a simple majority in favour of the suspension. Examples of contingent notices may be found in any day's *Notice Paper* in the section called "Contingent Notices" (for more detail see [Guide No. 5](#)—Suspension of Standing Orders).

5. Who "owns" a notice of motion?

A notice of motion belongs to the senator who gave it until the motion is moved. Then it belongs to the Senate. Before moving a motion, a senator may alter its terms or change the day for moving it (see below). A senator may also withdraw a notice of motion when it is called on or at any time before it is moved. Because the senator "owns" the notice, leave is not required to withdraw it, although special rules apply to the withdrawal of disallowance notices (see [Guide No. 19](#)—Disallowance). Notices of motion which are neither moved nor withdrawn remain on the *Notice Paper* until the end of a Parliament when all business lapses.

6. Amending a notice of motion

Notices may be amended by a senator before they are moved, in one of two ways. Senators may alter their notices in writing before the day on which the motion is to be moved by way of a letter to the Clerk ([standing order 77](#)), which can be provided to the Sub-Table Office before adjournment. The amended notice is then published in the next day's *Notice Paper*. Senators may also amend notices before moving them, provided that leave (unanimous consent of all senators present in the chamber) is given. If this method is chosen, senators should sign a copy of the changes and give it to the Clerk. If the changes are substantial, it is often useful to arrange to have them circulated to other senators in the chamber prior to seeking leave to amend.

7. Changing the day for moving a motion

A notice may be postponed under [standing order 67](#), or the day for moving it may be put back, but not brought forward, by letter under [standing order 77](#) (in the same way as the terms of a notice may be altered by letter—see above).

To postpone a notice under standing order 67, senators should ask their whips to take the necessary action or fill in a [proforma](#) and lodge it with the Clerk. Proformas are also available from the Table Office or the Clerk Assistant (Procedure), and [online](#). When the time comes for postponing or rearranging business, the Clerk reads out the list of postponements received for that day and these items are taken to be postponed unless any senator requests that the Senate itself determine the postponement of any item by a vote.

A senator may also postpone business at the last minute by seeking leave in the chamber to move a motion to do so.

8. Discovery of formal business

On each sitting day, there is an opportunity for some motions to be “fast tracked”; that is, moved and determined (or voted on) **without debate**. This is known as **discovery of formal business** and it occurs shortly after the time provided each sitting day for notices to be given for another day ([standing order 66](#)).

A senator who wants to use this opportunity should, when the President asks “Are there any formal motions?”, seek the call and ask for a particular notice of motion to be “taken as formal”. If no senator present objects, the senator may then move the motion for immediate determination. Notices of motion may be dealt with in this way if there is unanimous consent. To facilitate this process, the Red lists all notices of motion that may be considered that day under the “formal motions” item.

Which notices can be taken as formal?

Most notices of motion fall into one of three main categories of business: business of the Senate, government business or general business (see [Guide No. 4—Categories of Business](#)). While all business of the Senate and government business notices of motion may be dealt with as formal, there are restrictions on the types of general business notices of motion that may be dealt with in this way. Only general business notices of the following types may have formality requested:

- for the consideration of legislation (including the introduction of bills);
- relating to the conduct of Senate business;
- relating to the conduct of committee business (including the appointment of a select committee); and
- proposing an order for the production of documents (including proposing further action in relation to an order for the production of documents).

What happens if there is an objection?

An objection from any senator prevents a notice of motion being dealt with as a formal motion. If the notice is a business of the Senate or government business notice, this rarely matters because such notices will be called on later in the normal course of the day’s business and may be moved **and debated** then.

When an objection is raised to a general business notice of motion being dealt with as a formal motion, the senator in charge of it has two choices. The first choice is to do nothing. In this case, the notice of motion remains on the *Notice Paper* but the opportunity to “discover” (or fast-track) it has been lost. It may, however, be moved, by leave, at another time or it may be selected for

debate during the time set aside for general business on Thursday afternoons, and moved and debated then (see [Guide No. 4](#)—Categories of Business under Consideration of general business).

The second choice is for a senator to move to suspend standing orders to bring on either a vote or a debate on that item: see [Guide No. 5](#)—Suspension of standing orders.

Need assistance?

For assistance with any of the matters covered by this guide, government senators or their staff should contact the Clerk Assistant (Table), on extension 3020 or ca.table.sen@aph.gov.au, and non-government senators or their staff should contact the Clerk Assistant (Procedure), on extension 3380 or ca.procedure.sen@aph.gov.au.

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9 Matters of public importance and urgency

On Mondays, Tuesdays and Wednesdays in the routine of business there are up to two opportunities under [standing order 75](#) for senators to **discuss** a *matter of public importance* or **debate** a *matter of urgency*. These opportunities arise after “Discovery of formal business”.

1. What’s the difference?

The difference is a procedural one. A matter of public importance (MPI) is **proposed** to the Senate for **discussion**. There is no question before the chair so no vote is taken at the end of the discussion. A matter of urgency, however, takes the form of a motion:

That in the opinion of the Senate the following is a matter of urgency:

[the matter of urgency is then specified]

The motion, moved without notice, is debated and the question is put at the end of the debate or when the time allowed for the debate expires. The matter of urgency should not itself be framed as a substantive motion (for example, “That the Senate condemns...”).

2. How many senators are required to support an MPI or urgency motion?

At the appropriate point in the program, the President reports the receipt of a letter proposing an MPI or urgency motion. In order for the proposal to proceed, it must be supported by four senators, not including the proposer, rising in their places. In this way a matter which is regarded by 5 or more senators as warranting immediate debate may be debated or discussed without the usual requirement for notice.

3. How are MPIs or urgency motions submitted?

Standing order 75 sets out the requirements for lodging proposals. In practice, proposals are accepted by the Sub-Table Office at 8.30 am each sitting day. Proformas for these proposals are available on the Senators’ intranet ([Senate Connect](#)). Proposals must be signed by the senator concerned and delivered by email (to table.notices.sen@aph.gov.au) or in hard copy. If more than two proposal are submitted at this time, the President will determine which proposals will be considered, having regard to the advice recieved from the Whips.

Proposals may be withdrawn by the proposer at the time the President reports them or at any time beforehand.

The Clerk Assistant (Procedure) can provide advice about the form of these proposals.

4. Time limits

Up to two proposals for an MPI or urgency motion may be considered on each day. The time available for each MPI or urgency motion 30 minutes.

Individual speaking times are 5 minutes

5. Subject matter

Proposals for MPIs and urgency motions are accepted if they relate to matters of Commonwealth ministerial responsibility. They provide an opportunity to debate or discuss topical issues of public policy and government performance.

6. Can they be amended?

An MPI may not be amended because it is not a motion. An urgency motion may not be amended unless standing orders are first suspended (see [Guide No. 5—Suspension of Standing Orders](#)) or unless **leave** is given. Any debate on the suspension of standing orders is included in the time available for the debate. If the total time available expires before the question on the suspension of standing orders is put, the suspension motion lapses and only the main question (on the unamended urgency motion) is put.

7. What is the effect of an urgency motion?

A vote on an urgency motion is technically a vote on whether the subject of the motion is a matter of urgency. The vote is often regarded, however, as a vote on the substantive matter. The motion may therefore be cast in terms that make it difficult for a party to vote one way or the other on the motion. [Chapter 9](#) of *Odgers' Australian Senate Practice* gives the following example:

...if the motion is to declare that the level of unemployment is a matter of urgency, a vote on the motion is regarded as a test of the Senate's attitude to the level of unemployment. If the party supporting the ministry votes against the motion this may be regarded as an expression of indifference on unemployment, but if the party votes for the motion this may be regarded as a confession of ministerial failure.

If an urgency motion is agreed to, any senator may move, without notice under [standing order 154](#), that the resolution be transmitted by message to the House of Representatives for its concurrence.

Need assistance?

For assistance with any of the matters covered by this guide, government senators or their staff should contact the Clerk Assistant (Table), on extension 3020 or ca.table.sen@aph.gov.au; and non-government senators or their staff should contact the Clerk Assistant (Procedure), on extension 3380 or ca.procedure.sen@aph.gov.au.

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10 Tabling of documents

The presentation of a document to the Senate is called *tabling*. This derives from the formal phrase used in the Senate standing orders: that a document be *laid on the table* of the Senate.

The tabling of documents – by the President, by committees, by ministers and assistant ministers, and by the Clerk – forms a significant part of almost every sitting day.

1. Opportunities for tabling documents

Many documents (eg government documents and documents presented by the President) are tabled at the commencement of sittings on Monday, Tuesday and Wednesday.

Time is set aside on Tuesday, Wednesday and Thursday for the presentation of committee reports and government responses. Some other reports and documents, including ministerial statements, are listed on the Red for presentation at other times during the day.

2. Authority for tabling documents

Before a document may be tabled its presentation must be authorised by the Senate. This authority is usually expressed through an order of the Senate.

A number of orders *allowing* the tabling of certain documents or types of documents exist, for instance in the standing orders. Where the authority to table a document does **not** already exist, a senator seeking to have the document tabled needs to obtain the approval of the Senate to do so. The main procedures available are:

- to move a motion *requiring* that the document be tabled; or
- to seek leave of the Senate to table the document.

These different methods of tabling, and the documents to which they relate, are discussed below. Opportunities for debating documents tabled in the Senate are covered in detail in [Guide No. 11](#)— Opportunities for debating documents and reports.

3. Orders allowing the tabling of documents

The vast majority of the documents tabled in the Senate each year are tabled in accordance with [standing order 166](#), which provides that “documents may be presented pursuant to statute, by the President, or by a minister [or assistant minister]”. Documents covered by this order may be presented without the need for further authorisation.

Documents “presented... pursuant to statute”

Documents required to be presented by Acts of Parliament are tabled each sitting day by the Clerk of the Senate. They are often referred to as “Clerk’s documents”. These are disallowable instruments

and other instruments of delegated legislation (eg, regulations, determinations, rules, orders). For more information on these instruments see [Guide No. 19](#)—Disallowance.

Documents “presented... by the President”

The President tables documents associated with the powers, responsibilities and proceedings of the Senate, the main categories of documents being:

- reports of the Auditor-General
- responses to Senate resolutions; and
- reports relating to the administration of the parliamentary departments (excluding the Department of the House of Representatives)

Documents “presented... by a minister [or assistant minister]”

Ministers and assistant ministers table documents relating to the executive, the administration of their portfolio responsibilities and public affairs generally. The main types of documents tabled under this order are:

- annual reports of government departments and agencies (often referred to as “government documents”)
- government responses to committee reports
- ministerial statements; and
- documents associated with government legislation (eg: explanatory memoranda).

Parliamentary secretaries, now referred to as assistant ministers, are not referred to in the standing order but a special order gives them this and other powers of ministers. The authority given to ministers and assistant ministers arises out of their duty to inform the Senate of executive matters and applies only when they are acting in their official capacity. A minister or assistant minister acting in a private capacity may not table documents under this order and would need to seek the leave of the Senate (as described below).

Petitions

The standing orders also provide a mechanism authorising the presentation of petitions. Documents conforming with the requirements of the relevant standing orders may be lodged with the Clerk as petitions and received by the Senate (see [Guide No. 7](#)—Petitions).

4. Orders requiring the tabling of documents

The Senate may order that documents be tabled (see [standing order 164](#)). This provides the authority for a range of documents to be presented.

Committee reports

When a committee is appointed or when matters are referred to an existing committee the committee is required to report to the Senate on the matters referred. Most references include a date by which the committee shall report (see [Guide No. 13](#)—Referring matters to committees).

Orders for the production of documents

The power to order the production of documents is one of the most potent investigative powers the Senate possesses. These orders most frequently require the tabling of documents in the possession of ministers, government departments and their agencies. The order will generally describe the documents sought and specify a date for their tabling. Occasionally an order may require the creation of the document in question.

Orders for the production of documents can also provide for documents to be presented to the Senate on an ongoing basis. Currently, for instance, continuing orders exist which require details to be presented on:

- public sector entity contracts
- departmental and agency files
- government appointments and vacancies and government grants
- commencement dates for legislation; and
- unanswered questions taken on notice at estimates hearings.

For more information see [Guide No. 12](#)—Orders for the production of documents.

Orders “calling for” or “requesting” documents

A resolution of the Senate may fall short of *requiring* the tabling of a document and instead may *request* that the document be presented. This is especially the case with the Auditor-General, whom neither the Government nor the Parliament may seek to direct. In practice both the Government and the Auditor-General normally act as if the Senate’s request were in fact a requirement.

For the most part, orders requiring the tabling of documents come about through motions moved by senators after notice. The standing orders make provision for motions for tabling to be moved *without* notice in the following circumstances:

- a document quoted in debate; and
- an answer to a question on notice under the procedures in standing order 74(5) – *the 30-day rule*.

Documents quoted in debate

Under [standing order 168](#), senators may move that ministers table documents from which they have quoted. If the motion is agreed to, the minister must comply unless he or she claims that the document is confidential. Any senator may also move a motion requiring that a document quoted by another senator be tabled. The motion must be moved immediately after the speech in which the document is quoted. Unlike a minister, a senator is not exempted from the order by a claim that a document is confidential. This procedure provides an alternative method of tabling a document if leave has been refused.

The 30-day rule and answers to questions

[Standing order 74\(5\)](#) outlines the *30-day rule* relating to answers to questions which senators have placed on notice. This standing order provides that a senator may seek an explanation for the failure of a minister to provide an answer to a question that has been outstanding for 30 days or more.

If the minister does not provide a satisfactory explanation, the senator may move a motion without notice relating to the minister’s failure to provide either an answer or an explanation. One of the motions that may be moved is a motion requiring the tabling on a specified date of an answer to the question.

Similar provisions apply to questions taken on notice during estimates hearings which remain unanswered after the day set by the relevant committee for answering questions.

For more information see [Guide No. 6](#)—Questions.

5. Leave of the Senate

A document may be tabled by leave of the Senate: that is, where no senator present objects to its being tabled. This is the procedure most often used by senators seeking to table documents they have in their possession.

The practice is that the document is shown to the duty minister, party leaders or whips, and to any independent senators present in the chamber, before leave is sought. Any senator may object to the granting of leave, in which case the document may not be tabled.

Where leave is refused a senator may wish to move a motion to suspend standing orders to enable a motion for the tabling of the document to be moved. This is normally done using a contingent notice of motion in the following terms:

To move (contingent on any senator being refused leave to table a document in the Senate)—
That so much of the standing orders be suspended as would prevent the senator moving that the document be tabled.

This means that, where leave is refused to table a document, a senator may move a motion to suspend any part of the standing orders that would stop the senator moving a motion to table the document. On the motion to suspend standing orders the Senate considers whether the proposed tabling of the document should be dealt with as a matter of urgency. If that motion is successful, the senator may move a motion that allows the Senate to determine whether the document should be tabled.

Leave of the Senate and the procedures for suspending standing orders are described in more detail in [Guide No. 5](#)—Suspension of standing orders.

6. What if the Senate is not sitting?

Committee reports, government documents and reports of the Auditor-General may be presented to the President when the Senate is not sitting (see standing orders [38](#) and [166](#)). Upon receipt by the President these documents are deemed to have been presented to the Senate. This power may be exercised by the President or, in the absence of the President, by the Deputy President or any one of the Temporary Chairs of Committees.

Documents which the President would ordinarily present to the Senate may be certified by the President when the Senate is not sitting. Upon this certification these documents are also deemed to have been presented to the Senate. Only the President may exercise this power.

Documents presented out of sitting are listed in the Senate *Journals*, and may be debated on the next sitting day. A [summary of procedures](#) for the presentation of documents when the Senate is not sitting is available to assist you.

7. What happens to tabled documents?

Once a document is tabled it may become the subject of action in the Senate. The consideration of documents is dealt with in [Guide No. 11](#)—Opportunities for debating documents and reports.

Tabled documents, because they are part of the records of the Senate, automatically become public and receive the protection of parliamentary privilege.

The Senate Table Office is responsible for the safe keeping of all tabled documents. This responsibility includes recording, indexing and archiving. Hard copies are available to senators upon request, to assist them in their parliamentary duties. Documents tabled in the Senate are made available online on the [Tabled Papers register](#) as soon as possible after tabling.

Need assistance?

For assistance with any of the matters covered by this guide, government senators or their staff should contact the Clerk Assistant (Table), on extension 3020 or ca.table.sen@aph.gov.au; and non-government senators or their staff should contact the Clerk Assistant (Procedure), on extension 3380 or ca.procedure.sen@aph.gov.au.

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11 Opportunities for debating documents and reports

On any sitting day, a range of documents is presented to the Senate (or **tabled**). These documents mainly fall into two categories: committee reports and other documents.

The standing orders establish the main opportunities to table documents (see [Guide No. 10](#)—Tabling of documents) and specify times for their debate. Senators wishing to debate documents at other times require leave (unanimous consent of all senators present).

1. Committee reports and government responses

Time is set aside on Tuesday, Wednesday and Thursday in each sitting week to present and debate committee reports and government responses to committee reports. During that time, senators may move motions relating to those documents without the requirement to seek leave and may speak for 10 minutes. On Tuesdays and Wednesdays, there is a total time limit of one hour for all motions.

On Thursdays, there is also a total time limit of one hour but that time must be shared with motions to debate documents, committee reports and government responses that were presented on earlier days and kept on the Notice Paper, to which each senator may speak for 5 minutes.

One exception to this is reports relating to bills referred pursuant to a recommendation of the Selection of Bills Committee. These reports may not be debated without leave, the rationale being that debate should take place when the bill itself is called on (for example, during the second reading debate). Such reports are listed further down on the Red, as business of the Senate orders of the day (see [Guide No. 4](#)—Categories of Business).

2. Other documents

On Monday, Tuesday and Wednesday a list of documents to be presented will be attached to the Red. These documents include:

- annual reports and other government documents
- treaties
- reports of the Auditor-General
- responses to Senate resolutions
- parliamentary administration documents.

Documents that have been presented out of sitting are also shown on this list.

On each of these days, 30 minutes is set aside in the afternoon for consideration of these documents. During this time the documents are called on and a senator may move to take note without the requirement to seek leave. Each senator may speak for 5 minutes. Any documents not reached on any day roll over to the next day, are listed on the [online Notice Paper](#), and are again available for consideration. Any remaining documents then roll over for consideration on Thursday afternoon, after the tabling and consideration of committee reports.

3. Ministerial statements

Ministers have a right to table documents at any time and there is a time set aside each afternoon for the tabling of ministerial statements. [Standing order 169\(3\)](#) provides that senators may move to take note of ministerial statements without seeking leave. Time limits for these debates are set out below.

Ministerial statements may also be included with the list of documents to be presented on Monday, Tuesday and Wednesday, and in these circumstances the rules for debate set out in [standing order 61](#) apply.

4. Follow-up debate

Any committee reports, government responses or other documents presented that have not come up for debate, or on which debate has not concluded, are listed on the *Notice Paper* on Thursday under one of the following headings:

- Documents
- Committee reports and Government responses; and
- Auditor-General's Reports.

At the specified time in the routine of business the Chair will call on the documents in order, and sometimes in groups.

Where 'debate adjourned' is shown next to a document on the *Notice Paper*, senators may resume debate on that document. Where the *Notice Paper* indicates a document is listed for 'consideration', a senator may move to take note of the document, and then any senator may speak for up to 5 minutes to that motion.

By moving to adjourn the debate or seeking leave to continue their remarks, senators may keep documents on the *Notice Paper* for debate on successive Thursdays.

5. Documents presented by the Clerk

The Clerk presents documents required to be tabled pursuant to statute or pursuant to an order of the Senate. Many of these are disallowable instruments and other instruments of delegated legislation which have the same force of law as Acts of the Parliament. Any senator may seek leave to move a motion to take note of a document in this group, but they are usually debated only on motions to disallow them (see [Guide No. 19](#)—Disallowance). These documents are listed on the Red for presentation early on each sitting day.

6. Ad hoc consideration of documents

The times and procedures set out above account for the vast majority of documents tabled in the Senate, but documents will sometimes be tabled at other times.

For instance, ministers have a right under the standing orders to table documents at any time and on occasion do table documents at times other than the time set aside each afternoon for the tabling of ministerial statements.

Sometimes it may be necessary for committee chairs to table reports outside of the specified times, and they may do so provided there is no other business before the chair. Other senators may table documents only if leave is granted, or if they are acting pursuant to an order of the Senate.

In each case, a senator would require the leave of the Senate to move to take note of these documents. [Standing order 169](#) limits the time for debates on motions moved by leave.

7. Time limits

The time limits for consideration of documents are set out in the following table.

Committee reports and government responses		
Motion to take note (Tuesday, Wednesday or Thursday)	10 mins	(limit for debate: 1 hr*)
Resumption, including Auditor-General's reports (Thursday)	5 mins	(limit for debate: 1 hr*)
Motions moved by leave	10 mins	(limit for debate: 30 mins per motion, 1 hr for all motions)
Documents		
Motions to take note (Monday, Tuesday and Wednesday)	5 mins	(limit for debate: 30 mins)
Resumption (Thursday)	5 mins	(limit for debate: 1 hr*)
Motions moved by leave	5 mins	(limit for debate: 15 mins per motion, 30 mins for all motions)
Ministerial statements		
Motion to take note	10 mins	(limit for debate: 30 mins per motion, 1 hr for all motions)

**1 hr combined debate on Thursday*

Need assistance?

For assistance with any of the matters covered by this guide, government senators or their staff should contact the Clerk Assistant (Table), on extension 3020 or ca.table.sen@aph.gov.au and non-government senators or their staff should contact the Clerk Assistant (Procedure), on extension 3380 or ca.procedure.sen@aph.gov.au.

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12 Orders for production of documents

The power to require the production of information is one of the most significant powers available to a legislature to enable it to carry out its functions of scrutinising legislation and the performance of the executive arm of government.

1. Source of the power

The Senate possesses this power through [section 49 of the Constitution](#) which provides that the powers of the Houses of the Commonwealth Parliament are, until declared by the Parliament, the powers of the UK House of Commons at the time of the establishment of the Commonwealth in 1901. Those powers undoubtedly included the power to call for documents. In 1987, the Commonwealth Parliament declared its powers through the [Parliamentary Privileges Act 1987, section 5](#) of which provided for the continuation of those powers in force under section 49 of the Constitution (except to the extent varied by that Act).

2. History and terminology

In the early days of the Senate, orders for the production of documents were frequently used as a routine procedure to obtain information from the government. Orders were directed at existing documents as well as at information which was specifically compiled in response to the Senate's orders. The latter were frequently called "returns", giving rise to the term "orders for returns" (the documents when supplied being "returns to order") which is regarded as synonymous with the term "order for production of documents".

Such orders were used by the first Senate to obtain a range of information including copies of government contracts, details of rents for government offices, and information about government appointments, defence procurements and intergovernmental agreements. Details may be found in *Business of the Senate 1901-1906*, available from the Senate Table Office.

The procedure fell into disuse after the Senate's first decade because governments supplied information as a matter of course, but was revived in the 1970s and has been much used in recent years, particularly to obtain information about matters of controversy.

3. Basic procedure

Documents may be ordered to be "laid on the table" of the Senate. [Standing order 164](#) contains provisions about communicating such orders, tabling "returns" to orders and dealing with non-compliance. Most orders for production of documents start with a notice of motion, which is moved and determined during "Discovery of formal business" on any sitting day (see [Guide No. 8](#)—Notices of Motion). Sometimes an order for production of documents is contained in an amendment moved to a motion for a particular stage in the consideration of a bill (see [Guide No. 16](#)—Consideration of Legislation).

An order for production of documents has the following elements:

- The “activating” words, “that there be **laid on the table**”, are the core of any such order. Alternative phrases, such as “the Senate **calls on** the Minister to table...”, do not have the same force, although a minister **may** choose to respond as if the resolution were an order for production of documents.
- The person at whom the order is directed is identified. This is usually a minister but orders have also been directed to statutory authorities or office holders. If the relevant minister is a member of the House of Representatives, the order is directed to the Senate minister representing that portfolio. If the recipient of the order is not specified, responsibility for acting on the order lies with the Leader of the Government in the Senate to whom all such orders are communicated by the Clerk under [standing order 164](#).
- A deadline for production of documents is specified. This is essential for the order to be effective. In specifying a deadline, the volume and nature of the documents requested should be taken into account. The deadline may be a specific time and date or contingent on another event occurring; for example, an Act commencing or a minister receiving a report. For a permanent order (otherwise known as an order of continuing effect), there may be an annual or biannual deadline.
- Finally, the documents are identified. They may be identified by title or by a description of individual (or classes of) documents. The order may specify **information**, rather than documents, which may require the respondent to create a document (or return) containing the information. In some cases, particular information is excluded from the order to make it clear that the Senate is not requiring publication of, for example, cabinet submissions or **genuinely** commercially sensitive information.

4. What information can the Senate ask for?

There are no limits on the documents which may be ordered to be tabled. There are no exemptions or exceptions for cabinet submissions or national security documents or other classes of documents for which governments have traditionally claimed public interest immunity (for the meaning of this term, see below). There is also no requirement that a document be one that is already in existence.

5. Public interest immunity claims

Ministers (and others to whom orders are directed) sometimes seek to withhold information sought by the Senate. The grounds for refusing to produce information are encapsulated in the generic term “public interest immunity”.

Public interest immunity, in the legal system, is a concept that recognises that it would be against the public interest for certain documents or information to be made public. It is the court’s duty to balance the public interest in non-disclosure against the public interest in the court having access to sufficient information to enable justice to be done, and to make determinations accordingly. The concept is also relevant to the relationship between parliament and the executive. It is acknowledged that some information held by government ought not to be disclosed. However, while ministers may make claims to withhold information, it is for the Senate to determine whether these claims are appropriate.

When refusing to produce all or part of the information sought by an order to produce documents, ministers (and others) are expected to explain to the Senate the grounds for their refusal and the harm that might be caused by producing the information, so that the Senate can assess the claims. The possibility that publication of a document may disclose cabinet deliberations, or prejudice national security or law enforcement operations, or adversely affect Commonwealth-State or international relations may be grounds for a claim by a minister of public interest immunity. These grounds may be accepted by the Senate. The Senate has resolved, however, that it does **not** accept

“confusing the public debate” or “prejudicing policy consideration” as grounds for public interest immunity claims or that all advice to ministers is “cabinet-in-confidence”. For the background to this resolution, see *The Senate and public interest immunity: early cases*, in [Chapter 19](#) of *Odgers’ Australian Senate Practice*.

On 7 December 2017, the Senate adopted a recommendation of the Procedure Committee that a report containing details of outstanding orders be tabled by the Leader of the Government in the Senate every 6 months. The report is also to provide a statement indicating whether resistance is maintained, and any changing circumstances that might allow reconsideration of earlier refusals (see Procedure Committee [report 1 of 2017](#)).

Other frequently-mentioned grounds for public interest immunity claims are as follows.

Commercial confidentiality

As the level of interaction between governments and the private sector increases, particularly through contracting out of functions and projects, commercial confidentiality is being used more and more frequently as a ground for withholding information from the Senate and its committees. Although there is a broad public interest in governments being able to carry out their functions efficiently, including through arrangements with the private sector, commercial confidentiality claims were generally made to protect the interests of particular companies and individuals against potential competitors. The recent tendency, however, has been for claims of commercial confidentiality to be made in relation to **any** information that is vaguely commercial in nature, rather than in respect of information the disclosure of which could **harm** the commercial interests of a person. The Senate has not accepted such a broad interpretation of commercial confidentiality and made an order on 30 October 2003 for any claim of commercial confidentiality to be made by a minister and 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. The Senate may then determine whether the claim is accepted.

Legal professional privilege

Legal professional privilege is often claimed to avoid disclosure of advice given to ministers or public servants by the government’s legal advisers, but the Senate has not accepted that this category of immunity applies to the relationship between Parliament and the Executive. It applies in a very restricted sense in proceedings before the courts to protect the relationship between legal advisers and their clients.

Sub judice convention

The *sub judice* convention relates in a broader sense to legal proceedings. As practised in the Senate, it is a convention whereby the Senate agrees to limit debate or inquiry to avoid prejudicing proceedings that are before a court. For the convention to be invoked, there must be proceedings actually afoot or charges laid. There must be a real danger of prejudice to those proceedings by public canvassing of issues in the Senate, and the danger of prejudice must be weighed against the public interest in the issues being discussed. Danger of prejudice is considered greater where proceedings are being heard by a magistrate, or where a jury is involved. The preliminary nature of magistrates’ court proceedings and the perception that juries are less practised at ignoring public commentary about a case than judges are the reasons for this greater apprehension of danger. For further details, see [chapter 10](#) of *Odgers’ Australian Senate Practice*.

The *sub judice* convention may be invoked by a minister to avoid disclosing information relating to legal proceedings but, again, the claim is one to be determined by the Senate.

Freedom of information

On occasion ministers and officials seek to apply freedom of information procedures to decisions about disclosure of information to the parliament and its committees. As noted in the [153rd Report](#) of the Privileges Committee, the Freedom of Information Act has no application to parliamentary inquiries. The Committee noted that any material which would be released under the Act should be produced or given to a parliamentary committee on request. It is also noted that due to the Executive's accountability to the Parliament, the public interest in providing information to a parliamentary inquiry may be greater than the public interest in releasing information under the Act.

Further, in a resolution agreed to on 25 June 2014, the Senate declared that declining to provide material on the basis that an FOI request for the information already existed was unacceptable and not supported by the Act.

6. What can the Senate do if a minister refuses to produce information?

It is clear that the Senate has the power to enforce its orders. (see Senate Committee of Privileges, [49th Report](#)) The refusal of a minister to comply with an order of the Senate may ultimately be dealt with as a contempt of the Senate, with penalties applied in accordance with the *Parliamentary Privileges Act 1987*. On most occasions, however, ministerial refusals to produce information are resolved through political means, according to the circumstances of the case.

There are many remedies available to senators to pursue information which governments are reluctant to disclose. These remedies fall broadly into two categories: punitive remedies and coercive remedies.

Punitive remedies

Punitive remedies are those which make it more difficult for ministers to operate in the Senate and for a government's legislative program to be achieved. Examples include:

- impeding the progress of legislation through motions to postpone consideration of particular bills, including until after the requested information has been produced, or by taking up time that would otherwise be spent on government legislation
- censure motions
- motions restricting the ability of ministers to handle government business
- motions depriving ministers of procedural advantages they enjoy under the standing orders, such as the ability to rearrange business on any day or determine the order of government business on the *Notice Paper*; and
- motions to extend question time or other elements in the routine of business.

Coercive remedies

Coercive remedies are those which use alternative means of obtaining all or part of the information to which access has been refused. Committees often play a major role in such remedies because of the ability of committee members to question ministers and officials directly, and because they can take evidence *in camera* (in private). Examples include:

- orders for the information or documents to be produced to a specified committee, including instructions to the committee about how the information is to be handled (received *in camera*, not published for a specified period etc)
- orders requiring particular committees to hold hearings and particular witnesses to attend for the purpose of answering questions about the information or documents

- further orders for production of the documents, perhaps refining the scope of the demand or excluding certain kinds of information to encourage compliance
- motions requiring ministers to make regular explanations to the Senate about the reasons for non-compliance with the previous order (or orders) and providing for motions to be moved, without notice, to take note of such explanations; and
- motions requesting the Auditor-General, or requiring another third party, to examine the contentious material and report to the Senate on the validity of the grounds claimed by the minister for non-production.

All such remedies require the support of a majority of the Senate to implement.

The 30-day rule

Under [standing order 164](#), a senator may ask a minister for an explanation of that minister’s failure to comply with an order for production of documents within 30 days after the date specified for compliance.

The senator may then move – without notice – a motion to take note of the explanation or, if no explanation is provided, a motion in relation to the minister’s failure to provide either an answer or an explanation.

Need assistance?

Advice on any of the matters covered by this guide is available from the Clerk of the Senate extension 3350 or clerk.sen@aph.gov.au, the Clerk Assistant (Table) extension 3020 or ca.table.sen@aph.gov.au (for ministers) or the Clerk Assistant (Procedure) extension 3380 or ca.procedure.sen@aph.gov.au (for non-government senators).

The Clerk Assistant (Procedure) is also available to assist with drafting notices of motion for orders for documents.

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13 Referring matters to committees

1. Why refer matters to committees?

The Senate has a wide range of responsibilities to consider proposed laws, to examine government expenditure and administration, and to provide an effective forum for the detailed examination of public policy issues. One of the ways in which the Senate is able to meet these responsibilities and ensure that it is fully informed when making decisions is by delegating a range of tasks to its committees.

Committees provide convenient vehicles for conducting inquiries and examining issues because of their relatively small size, their ability to meet in a variety of places and the flexibility of their proceedings. They are able to receive written submissions and hear evidence on specified matters, and to examine issues in closer detail than is possible on the floor of the Senate. As numerous committee inquiries can be undertaken at the same time, many different issues can be examined and quickly reported back to the Senate.

2. What are the powers and functions of committees?

Committees have no powers of their own. The Senate, through its [standing orders](#) and through resolutions, determines which of its powers will be delegated to committees and for what purpose. Each committee is established by orders of the Senate which define those delegated powers and functions and prescribe its size, composition and operations. Similarly, the terms of reference for each committee inquiry originate as orders of the Senate.

It is within the power of the Senate to establish a new committee to inquire into any matter within the competence of the Senate. As a practical matter, however, most inquiries are undertaken by the Senate's well-established committee system. Within the committee system, different types of committees perform different functions. A full description of the structure and role of the Senate committee system can be found in [Senate Brief No. 4—Senate Committees](#).

3. How are matters referred to committees?

As noted above, the functions of committees and their terms of reference originate as orders of the Senate.

From a practical viewpoint, it is often unnecessary for individual senators to take any action to refer matters to committees because the matters are referred automatically under provisions in the standing orders. Matters that are automatically referred to committees without the need for further action by the Senate are often called standing references. Standing references are generally triggered by events described in the relevant standing orders, for instance, the presentation of a document or the introduction of a piece of legislation.

References relating to other routine matters are often the subject of established practices by which matters are routinely referred, so that it is generally unnecessary for individual senators to take any action in the Senate to ensure their reference. Examples of this include the reference of estimates to legislative and general purpose standing committees and the reference of bills to committees through the selection of bills process.

For other, non-routine matters, the reference must be initiated by a senator taking advantage of an appropriate opportunity in the Senate chamber.

In some areas a combination of these processes may apply. The approach taken varies with the subject matter of the proposed reference.

4. Reference of particular matters

General inquiries

To establish an inquiry into a matter that is *not* automatically referred to a committee – for instance, a matter of public policy – the Senate must agree to an order giving effect to that reference. The usual process is for a motion to be passed by the Senate after a senator has given notice of the proposed reference. (see [Guide No. 8](#)—Notices of motion).

Where the committee in question is a **legislation committee** or a **references committee** established under [standing order 25](#) a senator may give notice of a proposed reference at any time during a sitting day, either by seeking the call when no other business is before the chair or by delivering the notice to the Clerk at the Table. A further advantage is that such a notice is classified as ‘business of the Senate’ under [standing order 58](#). This gives debate on the motion priority in the routine of business (see [Guide No. 4](#)—Categories of Business).

As with other substantive motions, if no senator objects a motion to refer a matter to a committee may be moved by leave without the requirement for notice. In urgent cases a senator may also seek to escape the requirement for giving notice, or may seek to give priority to debate on the proposed reference, by moving to suspend standing orders. These processes are examined in [Guide No. 5](#)—Suspension of standing orders.

Usually the proposal is to refer matters to an existing committee. Occasionally the Senate will establish a new committee – known as a select committee – to undertake a specific inquiry. In this case the resolution proposing the reference must also spell out the powers, functions and composition of the new committee. The Clerk Assistant (Procedure) can assist non-government senators in drawing up such proposals.

Legislation

The most common method for the reference of a bill to a committee is through the adoption by the Senate of the recommendations of the [Selection of Bills Committee](#). This committee, established under [standing order 24A](#), has a standing reference to consider each bill introduced or proposed to be introduced in the Senate to determine whether it should be referred to a committee for inquiry and report.

The Selection of Bills Committee, comprising the whips of the major and any minor parties and four other senators, meets weekly when the Senate is sitting. Senators submit proposals to the committee for particular bills to be referred to the relevant standing or select committee. The committee then makes recommendations to the Senate about bills to be referred, the committees to which (and the stage at which) they are to be referred, and the reporting dates. Adoption of the report by the Senate has the effect of referring the bills as recommended. The motion for the adoption of the report may be amended to vary the details of the recommendations or to add or delete bills.

Bills may also be referred to committees by motion after notice, as described above. Opportunities also arise during the consideration of legislation, by way of an amendment to the motion for one of the stages of consideration of a bill – typically the question for the second reading ([standing order 114\(3\)](#)), or the motion for the adoption of the report from the committee of the whole. In these cases the amendment may propose the reference of the bill, or of certain provisions of the bill, or it may propose the reference of related policy matters rather than the bill itself.

A further opportunity to propose the reference of a bill to a committee arises after the second reading of a bill. [Standing order 115\(2\)](#) provides that a motion to refer the bill to a committee may be moved at that stage without the requirement for notice. The legislative process is fully described in [Guide No. 16](#)—Consideration of legislation.

‘Time critical’ bills

Since 2009, the Senate has adopted measures to ensure that ‘time critical’ bills introduced into the House of Representatives during the budget estimates fortnight may be referred to committees before the Senate returns for the June sittings. A motion is moved referring bills introduced during that period with provisions commencing on or before 1 July to the relevant committee. A committee may decline to examine a bill if, by unanimous decision, it considers that there are no substantive matters requiring consideration.

Legislative scrutiny

The scrutiny of legislation by the Senate is also assisted by standing references to three legislative scrutiny committees.

The [Scrutiny of Bills Committee](#) established under [standing order 24](#) examines each bill to determine whether there is a risk that personal liberties or civil rights may be infringed. It reports its concerns to the Senate in the Scrutiny Digest.

The [Scrutiny of Delegated Legislation Committee](#) established under [standing order 23](#) scrutinises all instruments of delegated legislation to ensure that the government’s power to make such delegated legislation is not in any way misused. More information on delegated legislation and on the work of the committee can be found in [Guide No. 19](#)—Disallowance or in [chapter 15](#) of *Odgers’ Australian Senate Practice*.

The [Parliamentary Joint Committee on Human Rights](#) was established in March 2012 in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The committee examines all bills and legislative instruments for compatibility with international human rights standards.

Government agencies, annual reports and estimates

The eight legislation committees established under [standing order 25](#) each have a role in the scrutiny of government departments and agencies. The allocation of portfolios to committees for this purpose is determined by resolution of the Senate, usually at the beginning of each Parliament. There are three aspects to this scrutiny role. Two of them – the examination of annual reports of departments and agencies and the scrutiny of their performance – exist as standing references in accordance with [standing order 25\(2\)\(a\)](#) and [standing order 25\(20\)](#).

The third aspect of this scrutiny – the consideration of the estimates of departments and agencies – is provided for in [standing order 26](#). The committees’ consideration of estimates is triggered by a motion that is routinely proposed by a minister or assistant minister after the tabling of relevant budget documents, accompanying the introduction of the appropriation bills in the House of Representatives. Further information on the estimates process can be found in [Senate Brief No. 5](#)—Consideration of Estimates by the Senate’s Legislation Committees.

Internal operations of the Senate

Matters relating to Senate procedure may be referred to the [Procedure Committee](#) by ordinary resolution of the Senate, but are more typically referred by the President ([standing order 17\(3\)](#)).

A number of preconditions apply to the raising of matters of privilege for reference to the [Committee of Privileges](#). These are described in [Guide No. 20](#)—Parliamentary privilege.

A number of domestic committees exist which deal with matters relating to the internal operations of the Senate. The standing orders establishing these committees each contain standing references:

- [Appropriations, Staffing and Security Committee \(standing order 19\)](#);
- Library Committee ([standing order 20](#));
- House Committee ([standing order 21](#));
- [Publications Committee \(standing order 22\)](#); and
- [Committee of Senators' Interests \(standing order 22A\)](#).

More information on these committees can be found in [Senate Brief No. 4](#)—Senate Committees.

Need assistance?

For assistance with any of the matters covered by this guide, government senators or their staff should contact the Clerk Assistant (Table), on extension 3020 or ca.table.sen@aph.gov.au; and non-government senators or their staff should contact the Clerk Assistant (Procedure), on extension 3380 or ca.procedure.sen@aph.gov.au. Assistance with matters relating to committees is always available from the Clerk Assistant (Committees), on extension 3370 or ca.committees.sen@aph.gov.au.

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14 Committee membership

Most senators are members of committees during their term of office. There are currently approximately 40 committees on which senators serve. These include legislation committees and references committees, legislative scrutiny committees, domestic standing committees, select committees and joint committees of various kinds. For further information about the committees, see [chapter 16](#) of *Odgers' Australian Senate Practice*.

1 How is the composition of committees determined?

The Senate, through its standing and other orders, determines the composition of its committees. The composition of joint committees is determined by resolutions agreed to by both Houses. The composition of most committees reflects the composition of the Senate itself and the distribution of chairs is also guided by this principle.

The mainstay of the Senate committee system is its legislative and general purpose standing committees. In their current incarnation these comprise eight legislation committees and eight references committees, each with coverage of particular subject and government portfolio areas. The table below shows the composition of these committees.

Committee type	Established by...	Number of members	Membership formula	Chair
legislation committees	standing order 25	6	<ul style="list-style-type: none"> • 3 government • 2 Opposition • 1 minor party/independent 	government
references committees	standing order 25	6	<ul style="list-style-type: none"> • 2 government • 3 Opposition • 1 minor party/independent 	opposition/ minor party/ independent

A government senator chairs each of the legislation committees. The allocation of chairs of references committees is determined by agreement between the Opposition, minor parties and independent senators. [Standing order 25\(9\)](#) provides for the matter to be determined by the Senate if agreement cannot be reached.

The table below shows the composition of the other Senate committees which are established under the standing orders.

Committee type	Established by...	Number of members	Membership formula	Chair
Appropriations, Staffing and Security	standing order 19	9	<ul style="list-style-type: none"> • President • Deputy President • Government Leader (or proxy) • Opposition Leader (or proxy) • 3 government • 3 opposition, minor party or independent 	President
House	standing order 21	7	<ul style="list-style-type: none"> • President • Deputy President • 5 senators 	President
Library	standing order 20	7	<ul style="list-style-type: none"> • President • 6 senators 	President
Privileges	standing order 18	8	<ul style="list-style-type: none"> • 4 government¹ • 3 opposition² • 1 minor party or independent 	opposition
Procedure	standing order 17	10 (4 ex officio, 6 nominated)	<ul style="list-style-type: none"> • President • Deputy President • Government Leader (or proxy) • Opposition Leader (or proxy) • 6 senators 	Deputy President
Publications	standing order 22	7	<ul style="list-style-type: none"> • 7 senators 	government
Scrutiny of Bills	standing order 24	6	<ul style="list-style-type: none"> • 3 government • 3 opposition, minor party or independent 	opposition
Scrutiny of Delegated Legislation	standing order 23	6	<ul style="list-style-type: none"> • 3 government • 3 opposition, minor party or independent 	government
Selection of Bills	standing order 24A	party or minor party whips and 4 nominated	<ul style="list-style-type: none"> • Government whip • Opposition whip • minor party whips • 2 government • 2 opposition 	Government Whip
Senators' Interests	standing order 22A	8	<ul style="list-style-type: none"> • 3 government • 4 opposition • 1 minor party/ independent 	opposition

For select committees the membership formula is usually contained in the resolution of appointment or in a subsequent resolution. If not, [standing order 27\(1\)](#) provides for members to be nominated by the mover of the motion to establish the committee.

The composition of joint committees is determined by resolutions agreed to by both Houses, and is shown on each committee's homepage.

2 How are senators appointed to committees?

Senators are appointed to committees by resolution of the Senate, on the nomination of the Leader of the Government in the Senate, the Leader of the Opposition in the Senate, or minor parties or independent senators, in accordance with the membership formula for the particular committee.

A letter to the President nominating senators to be members of certain committees is lodged with the Table Office. The letter may be signed on behalf of a Senate party leader, the Manager of Government or Opposition Business, or a whip. In practice, most nominations are handled by the whips. Independent senators may also submit nominations.

The President announces receipt of the nomination to the Senate. These announcements are included on the Dynamic Red on any sitting day in the afternoons, although they may be dealt with at any time when there is no other business before the chair.

After the nominations are announced, the duty minister seeks leave to move a motion immediately for the appointment of senators to committees. Leave is required because this is a motion of which notice would otherwise need to be given. The Senate then votes on the motion and the members are thus appointed.

3 What happens if nominations outnumber vacancies?

It is unusual for there to be more nominations than there are vacancies because committee membership is generally resolved by agreement within or between the various parties, groups and independent senators. Where agreement cannot be reached, however, the standing orders provide for a ballot to be held so that the Senate itself may determine the issue (see [standing order 25\(6\)](#) and [standing order 27](#)).

When a ballot is to be held, the bells are rung for four minutes and the Clerks hand out ballot papers with the list of candidates. Senators vote by writing the names of the candidates they wish to vote for and the ballot papers are collected and counted by the Clerks. Whips are usually appointed as scrutineers to check the count. The President then announces the result. If two candidates have an equal number of votes, the result is determined by the President by lot ([standing order 163](#)).

4 Getting off a committee

It takes a resolution of the Senate to discharge a senator from membership of a committee. In practice, appointments and resignations are dealt with in the letters from nominators and a single motion proposes that senators be discharged from, and appointed to, committees.

5 Are there different types of membership?

For many committees there is only one type of membership: senators are appointed as “full members” of the committee. Occasionally a senator may be appointed for a period of time, for instance between specified dates or for the duration of a particular inquiry.

For **legislation committees and references committees**, however, the standing orders provide for different types of membership.

As well as the six full members of those committees, the Senate may appoint senators as **participating members**. Participating members may take part in public hearings and private meetings. They have all the rights of members, including the right to receive copies of submissions and other documentation and to contribute to reports, but they are non-voting members (see [standing order 25\(7\)](#)). As such, they do not affect the composition of the committee but they may count for the purpose of determining a quorum. Participating members are appointed to, and discharged from, committees by resolution of the Senate as described above.

Any senator has the right to attend **estimates hearings**, participate in deliberations and add to the committee’s report (see [standing order 26\(8\)](#)). It is not necessary for a senator to become a participating member of a committee for that purpose.

A **substitute member** is appointed by resolution of the Senate to replace an existing member for a specific period of time, for the duration of a particular inquiry or for the consideration of particular issues. For example, one senator may replace another on a committee considering a particular bill. Unlike participating members, substitute members have voting rights in respect of those matters for which they are substituting.

Under [standing order 25\(7\)](#), first adopted as a temporary order in late 2006, a participating member of a legislation committee or a references committee may be appointed by letter to the Chair to attend a committee meeting as a substitute for a member who is unable to attend. Committee secretariats can assist senators in making these arrangements.

Substitute and participating membership provides significant flexibility. Although the standing orders refer to such membership only in relation to legislative and general purpose standing committees, the Senate may make similar arrangements for other kinds of committees by specific resolution. Since 2008, for instance, participating membership provisions have been extended to a number of select committees.

6 Quorums

A quorum is the minimum number of members required to be present for a meeting to proceed. As in the Senate, a quorum must be formed if a senator draws attention to its absence (see [standing order 29\(2\)](#)). [Standing order 29\(1\)](#) provides that a quorum in each committee or subcommittee is either a majority of the members or two members, where one was appointed on the nomination of the Leader of the Government in the Senate and the other on the nomination of the Leader of the Opposition in the Senate. Participating members may count towards a quorum if a majority of members is not present. The Senate may agree to different quorum arrangements for particular committees.

7 Can senators serve on committees before they are sworn in?

New senators may be appointed to committees in advance of their swearing-in and may serve on committees from the first day of their term of office. In practice, the appointment of new senators to committees from the beginning of a term starting on 1 July is often agreed to in advance by the Senate so that committees may continue to operate with full membership through the transition from one Senate to another.

8 Conflict of interest

A senator who has a conflict of interest in relation to a committee inquiry may not sit on the committee for that inquiry. See [chapter 16](#) of *Odgers’ Australian Senate Practice* for further details. Senators may wish to seek advice on such matters from the Clerk.

Need more information about committees?

For assistance with any matters covered by this guide contact the Clerk Assistant (Committees) on extension 3371 or ca.committees.sen@aph.gov.au.

For general information, see:

- [Senate Brief No. 4](#) – Senate Committees
- [Senate Brief No. 5](#) – Consideration of Estimates by Senate Committees

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15 Reading a bill

This guide examines the structure of bills and parliamentary amendments to bills, and how they are dealt with in committee of the whole. For more detail on the consideration of legislation, see [Guide No. 16](#)—Consideration of legislation.

Structurally, bills fall into two categories, based on their function:

- bills proposing new, stand-alone legislation; and
- bills amending existing legislation.

Occasionally, bills combine both functions. The type of bill determines its layout and the terminology used to describe its parts.

1 New, stand-alone legislation

A bill proposing new, stand-alone legislation consists of a title (“A Bill for an Act to . . .”), enacting words (“The Parliament of Australia enacts:”) and a series of clauses. When passed, a bill becomes an *Act* and clauses are referred to as *sections*. The parts of a clause are:

- (1) subclause (or *subsection on enactment*);
 - (a) paragraph;
 - (i) subparagraph;
 - (A) sub-subparagraph (rarely used).

The clauses may be grouped according to subject matter. The normal hierarchy of groupings is as follows:

- Chapter
- Part
- Division
- Subdivision

If used, the most common groupings are Parts and Divisions. A bill of this type may also have one or more Schedules at the end, containing material which will form part of the Act but which is convenient to present separately from the main body. Examples include the texts of treaties or other international agreements being incorporated into Australian law, proformas such as the ballot papers and nomination forms in Schedule 1 of the *Commonwealth Electoral Act 1918* or self-contained rules relating to particular matters referred to in the main body, such as the conditions applying to the various types of broadcasting licences in Schedule 2 of the *Broadcasting Services Act 1992*. Confusingly, the parts of a Schedule are also usually called “clauses” and continue to be so called even after enactment.

Numbering

There is no universal system of numbering for Commonwealth legislation. Some bills or Acts have their own numbering systems, particularly when the bill or Act is a large one, like the *Corporations Law*. However, the most common system uses the following conventions:

- Chapters (if any) are numbered consecutively from 1
- within each Chapter, Parts are numbered consecutively from 1, each new Chapter beginning with Part 1
- within each Part, Divisions are numbered consecutively from 1, each new Part beginning with Division 1
- within each Division, Subdivisions are lettered consecutively from A; and
- within the Act or bill as a whole, sections or clauses are numbered consecutively from 1; for example, Division 3 of Part 2 might begin with section (or clause) 46.

The system of numbering used in any bill or Act will be clear from the contents page. In citing a particular “bit” of a bill or Act, it is normal to include only so much information as is necessary to distinguish that “bit” from others. Clause or section numbers are always unique (unless there has been an error!) and are referred to in isolation; for example, it is not necessary to say “section (or clause) 46 of Division 3 of Part 2” because section (or clause) 46 occurs only once. But it may be necessary to say “Division 3 of Part 2”, rather than “Division 3”, if other Parts in the bill or Act also contain a Division 3.

Examples of other numbering systems include the following:

- The *Income Tax Assessment Act 1997* contains Chapters 1 to 6. Within Chapters, Part numbers have two elements, the first being the Chapter number; for example, Part 2-5, Part 3-1, Part 3-45. Divisions are the most important guide to the different areas covered by the Act. They are numbered in a sequence from 1 to 995 throughout the whole Act. Subdivision and section numbers have two elements, the first being the Division number. So, for example, section 375-815 (about deductibility of film losses) is located in Subdivision 375-G, Division 375 of Part 3-45 of Chapter 3. It is preceded by section 375-810 and followed by section 375-820. There are gaps left in the Part, Division and section numbering sequences because it is expected that more and more “bits” will need to be inserted in the Act over time.
- The *Aged Care Act 1997* follows similar conventions, but on a smaller scale and without the gaps.
- The *Environment Protection and Biodiversity Conservation Act 1999* contains Chapters 1 to 7 but its 22 Parts are numbered consecutively throughout; for example, Chapter 5 begins with Part 12.

Unless gaps have been left in the numerical sequence, new sections are inserted using a combination of numbers and letters. For example:

- 2 new sections inserted between sections 303 and 304 would be sections 303A and 303B; and
- 2 new sections inserted between sections 303A and 303B would be sections 303AA and 303AB, and so on.

Typeface

In Commonwealth legislation typography is used as a guide to the structure and, therefore, the meaning of the text, by providing signposts for the reader. Spacing and indentation are also used to indicate the relationship between units of text. For example:

- normal text in a bill or Act is always in 11 point Times New Roman font:

The export of a specimen is an export from an approved aquaculture program in accordance with this section if the specimen was sourced from a program that, under the regulations, is taken to be an approved aquaculture program.

- notes or cross-references which do not form part of the bill or Act are distinguished by being in smaller 9 point font:

Note: *The defendant bears an evidential burden in relation to the matters in subsections (2), (3) and (4) (see subsection 13.3(3) of the Criminal Code).*

- section headings are always bold:

303DE Applications for permits

- other headings always have the same attributes:

Division 5—Concepts relating to permit criteria

Subdivision A—Non-commercial purpose exports and imports

- a defined term always appears in bold italics:

*For the purposes of this Part, the export of a specimen is an **eligible non-commercial purpose export** if, and only if:*

It is important to understand how an Act is numbered and the typographical conventions that are used because these are the keys to understanding any bill to amend that Act.

2 Amending bills

Most bills are of the second type; that is, bills amending existing legislation.

An amending bill usually consists of a title, enacting words, three clauses and a schedule or number of schedules. These schedules are sometimes called amending schedules to distinguish them from the schedules referred to above which contain substantive parts of the bill or Act. The three clauses provide for:

- what the Act is to be called (**Short title**)
- when it (or its various parts) will come into effect (**Commencement**); and
- an “activating” clause which gives the schedules their authority as law (**Schedule(s)**).

The schedules comprise a series of *items*, each one containing an amendment to an Act or providing for related matters such as how the amendments are to apply, what transitional arrangements between the old law and the new law are necessary or whether the old law will continue to apply in any particular circumstances. These latter items are sometimes called application, transitional and saving provisions, respectively.

An item containing an amendment to an Act consists of 3 parts:

- the item heading which specifies where in the Act the amendment is to be made
- the instruction which specifies what action is to occur (for example: “Insert”, “Add”, “Repeal”, “Repeal . . . , substitute”); and
- the text of the amendment (if required).

Using the item heading as a locator, the reader can follow the instruction to read the proposed amendment into the parent Act in order to see what the Act will look like if the amendment proposed to the bill is made.

Typography is just as important in an amending bill as it is in a stand-alone bill because it is used to distinguish information about the location of amendments from the proposed new text (which follows

the typographical conventions described above for stand-alone bills). The headings of amending schedules, parts of amending schedules (if used) and items are always in **Arial** font, with the font size corresponding to the level of heading. For example:

1
2 **Schedule 1—Amendment of the Environment**
3 **Protection and Biodiversity**
4 **Conservation Act 1999** ← Schedule heading

5 **Part 1—Amendments relating to wildlife** ← Part heading

6 **1 Subsection 224(2)** ← Item heading
7 After “this Division”, insert “(other than an export/import provision)”.

8 **2 At the end of section 224** ← Instructions
9 Add: ← Instructions
10 (4) In this section:

11 *export/import provisions* means:
12 (a) section 232A; or ← Line numbers
13 (b) section 232B; or
14 (c) any other provision of this Division, in so far as that
15 provision relates to section 232A or 232B.

16 **3 Subdivision D of Division 3 of Part 13 (heading)**
17 Repeal the heading, substitute:
18 **Subdivision D—Offences relating to exports and imports** ← Text to be inserted

19 **4 Before section 233**
20 Insert:
21 **232A Export of cetaceans**
22 (1) Subject to section 235, a person is guilty of an offence if the person exports:
23 (a) a cetacean; or
24 (b) a part of a cetacean; or
25 (c) a product derived from a cetacean.

The name of the Act being amended is also shown distinctively if it is not included in the schedule heading. For example:

1	
2	Schedule 3—Amendment of other Acts
3	<i>Biological Control Act 1984</i> ← Act to be amended
4	1 Paragraph 5(2)(b)
5	Omit “the <i>Wildlife Protection (Regulation of Exports and Imports) Act</i>
6	<i>1982</i> ”, substitute “Part 13A of the <i>Environment Protection and</i>
7	<i>Biodiversity Conservation Act 1999</i> ”.

In amending items, proposed new text uses the same terminology as the Act being amended. In Schedule 1, item 4, above, section 232A is referred to as a proposed section, not a clause.

3 Amendments to bills

Just as bills follow strict structural, typographical and stylistic conventions, so too do parliamentary amendments. These conventions make it easy to read the amendments into the bill, in the same way that items in an amending bill are read into the parent Act. Using page and line numbers of the bill, amendments identify the point in the bill where the proposed action is to occur before describing the action and any proposed new text. The format differs slightly according to whether the bill is a stand-alone bill or an amending bill. For example:

For a stand-alone bill

Clause 26, page 13 (lines 3 to 26), omit the clause, substitute:

26 Export permits

(1) A person must not...

[export permits]

Clause 31, page 15 (line 30) to page 16 (line 18), to be opposed.

[export without permit]

For an amending bill

Schedule 1, item 47, page 11 (lines 6 to 12), omit subsection (4).

[export without permit]

Schedule 1, page 15 (after line 23), after item 65, insert:

65A After Part 2

Insert:

Part 2A—Export Permits

Division 1—Administration

32A Applications for export permits

(1) The CEO...

[export permits]

Note that the descriptor in bold, italicised text and square brackets at the end (“export permits”) is not part of the amendment. It is a guide to the subject matter of the amendment to assist the Senate and facilitate the preparation of running sheets (see [Guide No. 16—Consideration of Legislation](#)).

Need assistance?

For assistance with any of the matters covered by this guide, government senators or their staff should contact the Clerk Assistant (Table), on extension 3020 or ca.table.sen@aph.gov.au; and non-government senators or their staff should contact the Clerk Assistant (Procedure) on extension 3380 or ca.procedure.sen@aph.gov.au.

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Last reviewed: December 2019

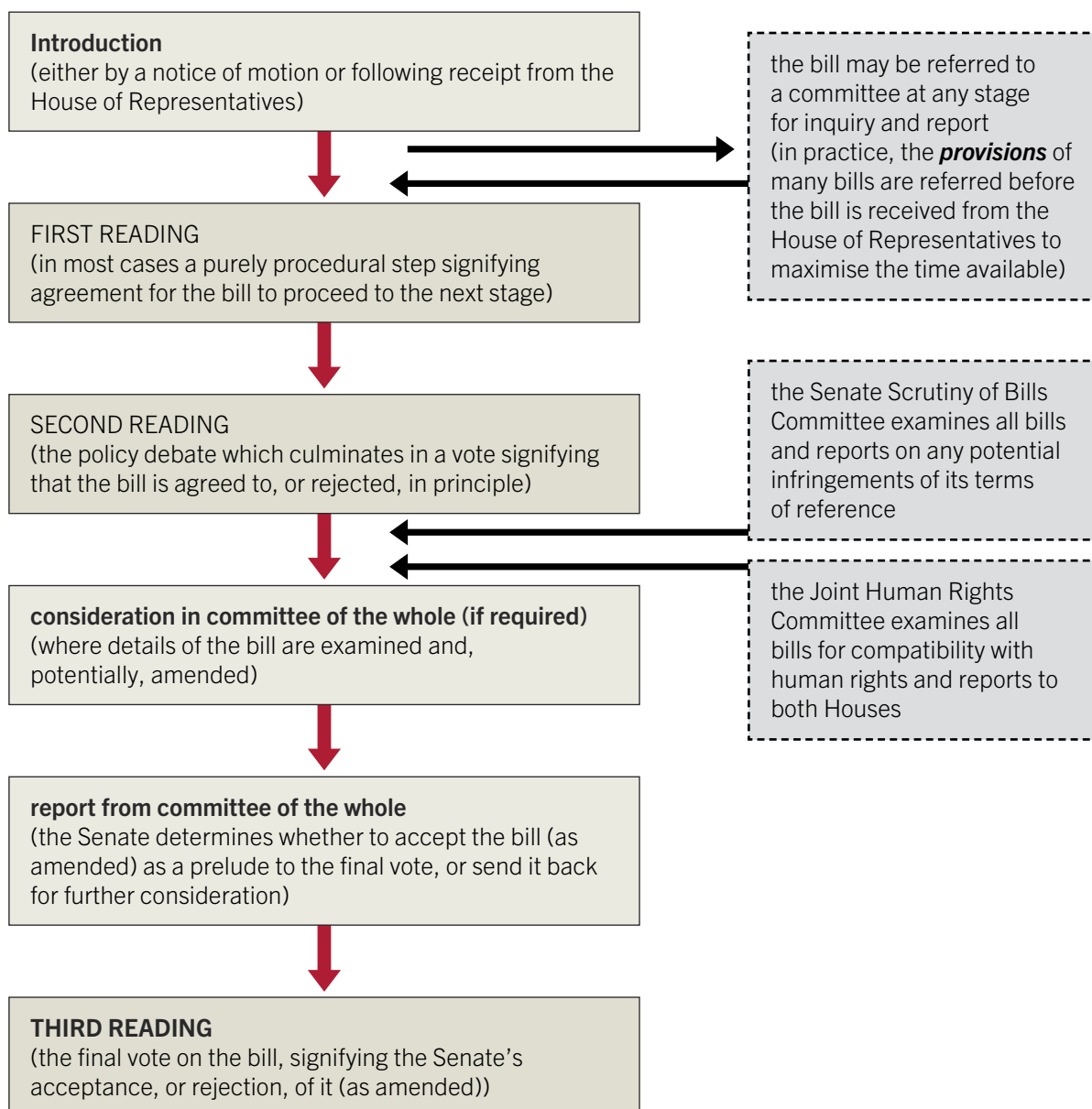
16 Consideration of legislation

1 An outline of the process

About half of the Senate’s time is spent considering proposed laws (*bills*). Although any senator may introduce a bill, most bills that are considered are introduced by the government of the day. Senators introduce their own bills as a way of making a policy statement, but limited time is available for their debate, and it is rare for a private senator’s bill to be passed into law.

Stages of consideration

Each bill, regardless of its source, is considered in the same way, involving the following steps:



2 Some general issues

Second reading and committee of the whole debate

A senator may make a second reading speech of up to 15 minutes and a further contribution to any second reading amendment moved after they speak (see below). Senators who speak after an amendment is moved are taken to be speaking to it. The second reading debate goes to the principles of a bill. It is opened by a minister who outlines the policies and rationale of the bill and is usually closed by a minister who may respond to issues or concerns raised during the debate.

Debate in committee of the whole is a flexible and interactive process in which the details of the bill are queried and amendments are moved, debated and determined. Although a senator may speak for up to 10 minutes at a time and there is no limit to the number of times a senator can speak on a question if other speakers are also participating, most contributions in committee are short.

What is the “cut-off”?

The cut-off ([standing order 111\(5\)](#)) is a procedure developed by the Senate to prevent an end-of-sittings rush of legislation. For a bill to be considered by the Senate during a period of sittings (the *current period*), it must have been introduced in either House in a previous period of sittings. In addition, if it was introduced in the House of Representatives in a previous period of sittings, it must be received by the Senate before two-thirds of the current period expires. A period of sittings is any period during which the Senate is not adjourned for more than 20 days.

The procedure applies to all bills received from the House of Representatives and bills introduced in the Senate by a minister, but not to private senators’ bills.

The Senate may exempt particular bills from the *cut-off*, allowing them to be considered during the current period. Requests for exemption usually take the form of a notice of motion (see [Guide No. 8—Notices of Motion](#)) and must be accompanied by an explanation of the need for exemption. Occasionally an exemption will be moved by leave, or after a suspension of standing orders.

3 The role of committees

What role do committees play in the consideration of legislation?

When bills are referred to a committee, the committee usually takes evidence from the minister, officials, interest groups and affected individuals and reports to the Senate. Although the committees may not amend bills, there is nothing to prevent them recommending amendments and the Senate adopting the recommendations.

Referring bills to committees

There are several means of referring bills to committees for inquiry and report. The most commonly used method is via the [Selection of Bills Committee](#). Senators submit proposals to the committee for particular bills to be referred to the relevant Senate standing committee. The committee then makes recommendations to the Senate about bills to be referred, the committees to which (and the stage at which) they are to be referred, and the reporting dates. Adoption of the report by the Senate has the effect of referring the bills as recommended. The motion for the adoption of the report may be amended to vary the details of the recommendations or to add or delete bills.

Bills may also be referred by way of motion after notice, by an amendment moved to the motion for one of the stages of consideration of a bill (see below), or by a motion moved after the second reading of the bill is agreed to.

Since 2009, the Senate has adopted measures to ensure that ‘time critical’ bills introduced into the House of Representatives during the budget estimates fortnight may be referred to committees

before the Senate returns for the June sittings. A motion is moved to provide for the automatic referral of bills introduced during that period with provisions commencing on or before 1 July to the relevant committee. A committee may decline to examine a bill if, by unanimous decision, it considers that there are no substantive matters requiring consideration (see [Guide No. 13](#)—Referring matters to committees).

The Scrutiny of Bills Committee

The [Scrutiny of Bills Committee](#) assesses all bills against terms of reference which are concerned with the protection of the rights and liberties of individuals and the rights of the legislature to hold governments accountable (see [standing order 24](#)). Where the committee detects a possible infringement, it seeks an explanation from the minister. An outline of the committee’s initial concerns and the results of considering the minister’s response are presented to the Senate in the [Scrutiny Digest](#). The committee often draws the Senate’s attention to problematic provisions in bills and individual senators may move amendments to address the problems.

If the committee has not finally reported on a particular bill because the minister has failed to respond to the committee’s concerns on the bill then, immediately before consideration of government business or consideration of the relevant bill, a senator may seek an explanation as to why a response has not been provided.

If the minister provides an explanation, the senator may move without notice that the Senate take note of the explanation. If an explanation is not provided, the senator may move without notice that the Senate take note of the failure to provide an explanation.

The Joint Human Rights Committee

The [Joint Human Rights Committee](#) was established in 2012 pursuant to legislation. Using seven specified international human rights instruments, the committee examines the statements of compatibility with human rights which are included in explanatory memoranda to bills and explanatory statements for legislative instruments, and reports its findings to both Houses.

4 Amendments and other details

It is important not to confuse two different types of amendments that can be moved during the consideration of legislation:

- amendments to the motions for particular stages of a bill’s consideration, which may affect the passage of the bill but not its content; and
- amendments to the text of the bill, which may affect the final content of the law.

Amendments to procedural motions

Amendments may be moved to the procedural motions for particular stages of a bill’s consideration. These amendments may add words to, or change words in, the motion to, for example:

- express an opinion about the bill or the government’s handling of the related policy issues
- reverse the effect of the motion so that the bill is defeated at that point
- refer the bill to a committee; and
- delay further consideration of the bill.

The motion for the second reading (“That this bill be now read a second time”) is the motion most commonly amended in this way. Amendments are also sometimes moved to the motion “That the report of the committee be adopted”, especially if the committee of the whole stage reveals further action that the Senate may wish to take at the earliest opportunity. An example is an order for

production of documents which may not be appropriate to include as an amendment to the bill, but which may be achieved through an amendment to the motion to adopt the report of the committee of the whole.

An amendment to the motion for the second or third reading of a bill which replaces the word “now” with the words “this day six months” has the effect of finally defeating the bill. This amendment is the only one which may be moved to the third reading motion. This form of amendment has its origins in traditional parliamentary practice. These days a senator seeking to defeat a bill will simply vote against the motion for the second or third reading.

Textual amendments to bills

Hundreds – sometimes thousands – of amendments are moved each year to bills in the Senate by ministers and by non-government senators. Approximately one third of all bills are amended. Non-government senators are assisted by the Clerk Assistant (Procedure) in drafting amendments while government amendments are usually produced by the government drafters. When amendments are finalised, the senator responsible for them authorises their circulation and they are distributed in the Senate and published on the Internet on the bills homepages, and on the Dynamic Red when the bill is being considered.

An amendment may be made to any part of a bill, provided that it is relevant to the subject matter of the bill (see [standing order 118](#)). Subject matter is usually assessed by reference to the long title of the bill (“A Bill for an Act to . . .”) and the explanatory memorandum, although the long title is only an indication of subject matter rather than determinative (see [chapter 12](#) of *Odgers’ Australian Senate Practice*). The relevance rule has always been interpreted liberally. Rulings of the President of the Senate since the early 1900s have rejected the British precedents which require amendments to be consistent with the scope and principle of the bill as agreed at the second reading.

Where there are several sets of circulated amendments for a particular bill, the Table Office prepares a **running sheet**, or marshalled list of amendments, for the guidance of the chair and those senators participating in the committee of the whole stage. Running sheets provide a suggested order of proceeding and also highlight where circulated amendments may conflict with one another and if amendments are consequential on others being agreed to.

Proceedings in committee of the whole

[Standing order 117](#) prescribes the order in which bills are to be considered. This is the clause-by-clause method which, in practice, is almost never followed. Most bills are instead “taken as a whole”, meaning that the entire bill is before the committee and available for amendment, not necessarily in a sequential manner. This method provides maximum flexibility, particularly in so-called amending bills where the amendments to principal legislation are contained in schedules appended to the body of the bill (and which, under the clause-by-clause method, would be dealt with in a single block).

When a bill is taken as a whole, the chair puts the question on each amendment, or group of amendments, or on each amendment to an amendment. When all amendments have been dealt with, the final question is “That the bill, as amended, be agreed to” or, if no amendments have been moved or successful, “That the bill stand as printed”. Only one amendment may be before the chair at a time, but, in practice, amendments are frequently moved together in groups by leave (unanimous consent of senators present).

The question on an amendment to **delete** a clause, item or proposed new section (or a larger unit such as a Subdivision, Division, Part or Schedule) is put in the form “That the [unit] stand as printed”. This is designed to test whether the unit has majority support. An equally divided vote on that question results in it being decided in the negative and the unit being removed from the bill. If, on the other hand, the question took the form of “That the amendment [to omit the unit] be agreed to”, an

equally divided vote would result in that **question** being lost and a unit which did **not** have majority support remaining in the bill. Amendments of this type are always drafted in the form, “[unit], **to be opposed**” and are always put by the chair separately from other amendments. Note, however, that this practice does not apply to requests for amendments which must be supported by a majority (see below and [Guide No.3—Voting in the Senate](#)).

Requests

The Senate sometimes **requests** the House of Representatives to make amendments that the Senate is prevented by the Constitution from making itself. Under [section 53](#) of the Constitution, the Senate may not amend:

- a bill imposing taxation; or
- a bill appropriating money for the ordinary annual services of government.

Any amendments proposed by the Senate to such bills must take the form of requests.

In addition, the Senate may not amend a bill “so as to increase any proposed charge or burden on the people”. Such amendments must also take the form of requests.

The interpretation of this provision is not entirely settled. As it refers to “proposed laws” it cannot be interpreted by the High Court.

In June 2000, the Senate agreed to an order requiring any circulated requests to be accompanied by a statement explaining why the amendments had been framed as requests and a statement by the Clerk of the Senate on whether the amendments would be regarded as requests under the precedents of the Senate. The former statement is prepared by the Office of Parliamentary Counsel (the government drafters) for government ministers’ requests and by the Clerk Assistant (Procedure) for non-government senators’ requests.

Requests may be made at **any** stage during consideration of a bill. The third reading of bills to which requests have been made is deferred until the House of Representatives responds and the Senate accepts the House’s response.

What happens when the Senate amends a bill?

When the Senate amends a bill introduced in the House of Representatives, the Senate returns the bill to the House with a list (or *schedule*) of the amendments it has made and asks the House to agree to them. The House may accept or reject the amendments, amend them or agree to substitute amendments. Unless the House accepts the amendments, the bill is returned to the Senate seeking the Senate’s agreement to the action taken by the House. The Senate may agree, or insist on its original amendments or make substitute amendments. Areas of the bill that have been agreed to by both Houses may not be revisited except to make amendments that are consequential on the House’s rejection of the Senate’s amendments. These negotiations between the Houses (in the form of *messages*) are dealt with in committee of the whole to provide maximum procedural flexibility, and the same process is followed with requests.

When the Senate amends a bill introduced first in the Senate, the amendments are incorporated into the bill which is reprinted before being sent to the House for agreement. This is known as a *third reading print* and the cover of the bill indicates that it is “as read a third time”. Any disagreements about amendments then made by the House are handled in the manner described above.

When both Houses have agreed to the bill in identical terms, perhaps after several rounds of negotiations, the bill is assented to. If agreement cannot be reached, the bill may be laid aside. For possible consequences of failure to agree, see [section 57](#) of the Constitution which provides for the dissolution of both Houses and convening a joint sitting under certain circumstances.

5 Common questions about legislation

Q: When can the first reading of a bill be debated?

A: When the bill is one which the Senate may not amend under section 53 of the Constitution; that is, a bill imposing taxation or a bill appropriating money for the ordinary annual services of government. The relevance rule does not apply to the debate and any matters may be canvassed. This opportunity is seldom used because there are now so many other opportunities for senators to raise general issues in the Senate (for example, through notices of motion, senators' statements, matters of public importance or urgency, the adjournment debate or debate on relevant documents or reports).

Q: When does an Act take effect?

A: Each Act has a commencement provision that specifies when it will take effect. The most common options for commencement are:

- on assent
- on a specified day or date
- immediately after a specified event (such as the commencement of another Act); or
- on a date to be fixed by Proclamation.

If an Act is silent about its commencement, the *Acts Interpretation Act 1901* provides that the Act comes into effect on the twenty-eighth day after it is assented to. In practice, this no longer occurs.

The Scrutiny of Bills Committee keeps a close watch on Acts commencing on a date to be fixed by proclamation, to safeguard against the intentions of the legislature being overridden by the failure of the executive to advise the Governor-General about the proclamation of Acts. Common practice is for such provisions to be drafted to provide for a 6-month period after assent, after which, if no proclamation is made, the Act is taken to have commenced (or to have been repealed). If there is no such provision, or if the period allowed is longer than 6 months without adequate explanation, the Scrutiny of Bills Committee invariably seeks an explanation from the relevant minister and reports on the matter to the Senate. The Government presents a report annually to the Senate, listing Acts or parts of Acts which have not yet been proclaimed, and giving reasons for non-proclamation.

Q: Where can I get online copies of bills etc?

A: Bills are available online under "[Parliamentary Business](#)" by choosing [Bills and Legislation or on ParlWork](#). By following the links on these pages, you can access a 'homepage' for each bill, containing:

- the text of the bill
- the explanatory memorandum
- second reading speeches
- the text of any circulated amendments; and
- the schedule of amendments (a list of amendments agreed by one House for consideration of the House in which the bill originated).

Links to the pages for individual bills are also available on the Dynamic Red and the Senate daily and weekly summaries (See [Guide No. 1](#)—Senate business documents). Paper copies may be obtained from the Table Office.

Q: When will running sheets be available?

A: Running sheets are prepared by the Senate Table Office only if complex amendments are circulated by two or more senators. The earlier amendments are circulated, the more time the Table Office has to draw up the running sheet.

Running sheets do not take account of uncirculated amendments even if they may have been provided to the Table Office under embargo. Where possible, running sheets are revised as new amendments are circulated. Running sheets are made available via links on the Dynamic Red. Copies may also be obtained from the Table Office or the Chamber Attendants.

Q: Where can I find out more about amendments, requests and section 53?

A: *Odgers' Australian Senate Practice*, [Chapter 13](#).

Procedure Committee, First Report of 1996, Parliamentary Paper 194/1996.

Need assistance?

For information about the progress of bills, see the [Senate daily and weekly summaries](#), and the [Senate Bills List](#).

Ministers and their staff should contact the Clerk Assistant (Table) on extension 3020 or ca.table.sen@aph.gov.au. Non-government senators and their staff should contact the Clerk Assistant (Procedure) on extension 3380 or ca.procedure.sen@aph.gov.au.

For general advice and documents contact the Senate Table Office on extensions 3010.

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Last reviewed: July 2022

17 Debating legislation under time limits

Debate on a bill is not normally subject to overall time limits, although individual speaking times apply. Theoretically, consideration of a bill can continue indefinitely. However, a majority of the Senate may agree with the declaration by a minister that a particular bill is urgent and should be subject to a time limit. Colloquially, such a time limit is referred to as a guillotine. This procedure is, in practice, limited to government bills because only a minister may move the necessary procedural motions. An alternative approach, which any senator may initiate, is to propose a “time management” motion, which operates in a similar manner to a guillotine although it does not involve the step of declaring a bill urgent. This is now the most common approach used to limit debating time on bills.

1. Why are guillotines used?

Where the government can obtain the support of a majority of the Senate, guillotines are used to provide finite debating times for a particular bill or to bring protracted debates to a close. They are most frequently imposed at the end of a period of sittings when the time available to deal with complex or copious legislation is running out. They are also used where a determined minority, by using the debating opportunities open to it, has prolonged debate on a bill. Adoption of a time limit ensures that the questions necessary to determine whether a bill will pass are put to the vote. The guillotine procedures are contained in [standing order 142](#).

2. How is a time limit initiated?

Only a minister may initiate a time limit using the guillotine procedures. The first step is for a minister to declare that a bill is an urgent bill and move that the bill be considered an urgent bill. The declaration and motion may refer to a single bill or to multiple bills or packages of bills. This motion may not be debated or amended and must be put.

Non-government senators have contingent notices on the *Notice Paper* to enable them to move, contingent on a bill being declared urgent, that so much of the standing orders be suspended as would prevent the motion being debated. When notice has been given in this way, the suspension of standing orders requires only a simple majority rather than an absolute majority (see [Guide No. 5—Suspension of Standing Orders](#)). The suspension motion may be debated for up to 30 minutes but debate may be foreshortened if any senator moves the *closure* (a motion that the question be now put). These contingent notices potentially enable the limitations built into the process of putting a guillotine in place to be set aside. Contingent notices relating to other parts of the process (or *occasions*) are mentioned below. Only one such contingent notice may be used on any single occasion.

3. How much time can be spent debating an urgent bill?

Once the motion that a bill is urgent is agreed to, the next step is for a minister to move a motion allotting time for the remaining stages of debate on the bill, or for any particular stage. This may be expressed in terms of hours, minutes or days or it may incorporate specific deadlines. Times may be allotted to each or any of the remaining stages or all remaining stages. For example:

Tariff Amendment Bill—allotment of time

second reading 1 hour
committee of the whole 2 hours

OR

Tariff Amendment Bill—allotment of time

second reading till 9:30pm, Monday 14 December
committee of the whole till 11:30pm, Monday 14 December
third reading till 11:45pm, Monday 14 December

OR

Tariff Amendment Bill—all remaining stages 3½ hours

The motion for the allotment of time may be debated for up to an hour, unless debate is foreshortened by the closure, and it may also be amended. Again, non-government senators have on the *Notice Paper* contingent notices for the suspension of standing orders to set aside this limitation and enable unlimited debate on the motion for the allotment of time. The suspension motion may be debated for up to 30 minutes unless the closure is successfully used. If the suspension motion is unsuccessful, debate on the motion for the allotment of time resumes, unless foreshortened by the closure. Once the allotment of time is agreed to, with or without amendment, the guillotine operates from the time that debate on the bill commences or resumes.

Once a guillotine is in place, senators may not seek to further limit debate on any proceedings on the bill by moving a closure motion, (“That the question be now put”) (see [standing order 142\(5\)](#)).

4. What happens when the allotted time expires?

When the time available has expired, the chair must put the question then before the Senate or the committee of the whole, and any other questions necessary to bring proceedings on the bill to a conclusion. The question is put on any amendments that have been circulated at least 2 hours before the expiration of time.

Alternatively, a minister may move that the allotted time be extended, or a non-government senator may use a third contingent notice to suspend standing orders to enable a motion to be moved for the extension of time or for unlimited time on the bill.

An urgent bill remains urgent until proceedings are finally concluded. If an urgent bill is returned from the House of Representatives, a minister may move a further allotment of time for its consideration.

5. “Time management” motions

This slightly euphemistic phrase describes what is effectively a guillotine, although the method by which it is initiated is quite different. A single motion is moved to put time limits in place for the consideration of bills, with the provisions of [standing order 142](#) applying as if the legislation were subject to a limitation of debate. An advantage of this is that it can reduce the number of steps required to put a guillotine in place (ie – there is no requirement for the bill to be declared urgent), however if the motion is moved without notice, leave of the Senate or a suspension of standing

orders is required (see [Guide No. 5](#)—Suspension of standing orders). Time management motions can also be moved by senators who are not ministers (see for example, [Journals, 21 June 2011](#)). Such motions have also been moved as part of broader motions varying the days and hours of sitting and the routine of business (see, for example, [Journals, 3 April 2019](#)).

Need assistance?

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18 Communications between the houses—Dealing with messages

1. Messages from the House of Representatives

Communications between the two Houses of the Commonwealth Parliament occur through messages from one House to the other. Messages convey business between the Houses and, as a courtesy, information that is relevant to the interests of the other House. Most business conveyed by message relates to legislation.

Some messages require no response and are simply reported by the chair “as early as convenient” (see [standing order 155](#)). Messages of this kind include:

- notification of agreement to Senate resolutions which have been sent to the House for concurrence
- notification of changes to the House of Representatives membership of joint committees
- notification of extensions of time granted by the House for joint committee inquiries referred by the House
- agreement by the House to Senate bills without amendment; and
- agreement by the House to amendments or requests for amendments made by the Senate to House bills.

The Senate sends equivalent messages to the House. No action arises from such messages.

Other messages seek action from the Senate in response to a request from the House. Messages of this kind include those seeking:

- agreement with resolutions passed by the House, including resolutions for the appointment, or variation to the terms of reference, of joint committees
- agreement to bills passed by the House
- agreement to amendments made by the House to Senate bills
- agreement to amendments made by the House to Senate amendments to House bills
- reconsideration of amendments made or requested by the Senate to House bills, where the House has disagreed to them
- reconsideration of Senate amendments disagreed by the House, combined with requests for agreement with substitute amendments made by the House
- reconsideration of Senate amendments or requests to House bills, disagreed by the House, insisted on by the Senate and again disagreed by the House;

or involving combinations or variations of the preceding types of messages.

Again, equivalent messages are transmitted from the Senate to the House.

2. When are messages considered?

Most messages received from the House relate to government business – generally bills – or to joint committees. When a message from the House seeking action by the Senate is reported by the chair, a minister is usually called to move a motion to provide for the consideration of the message either immediately or on the next sitting day. An order of the day for the consideration of the message on

the next sitting day is listed on the *Notice Paper* as government business. Under [standing order 65](#), the government may arrange its business on the *Notice Paper* to suit its changing priorities (see [Guide No. 4](#)—Categories of Business). However, a message transmitting a government bill for concurrence is usually dealt with immediately. Preliminary stages in the consideration of the bill by the Senate are completed and debate is usually adjourned after the motion is moved for the bill's second reading (see [Guide No. 16](#)—Consideration of Legislation).

When a message is received that does not relate to a government initiative, the Senate must determine how it will deal with the business contained in the message. This may require discussions among whips and other senators about who will have the carriage of the business, and motions to give the business a place within the Senate's routine.

3. Procedures for the consideration of messages

The first step in the consideration of a message is for a senator to move a motion proposing the terms of the Senate's response to the House. This motion may be amended and is often debated. When the motion has been determined, it is incorporated into a message signed by the President of the Senate and transmitted to the Speaker of the House of Representatives.

4. Messages dealing with legislation

Negotiations on legislation may require several messages back and forth between the Houses, and may also involve complicated proceedings. For this reason, messages involving the further consideration of legislation are dealt with in committee of the whole which provides a procedurally flexible forum for debating and determining complex matters. The ability for senators to speak several times to a question, which is provided under the procedures for the committee of the whole, is often crucial to the resolution of complex questions about the form and content of legislation.

The special procedures applying to messages concerning legislation returned from the House are contained in [standing order 126\(1\)](#) and [standing order 132\(1\)](#).

The form of the question

As with other messages, the Senate's response to a message concerning negotiations on legislation starts with a motion proposing the terms of the response. This may take one of the following forms:

- That the Senate does not insist on its amendments to which the House has disagreed (or insisted on disagreeing).
- That the Senate insists on its amendments . . .[unusual].
- That the Senate does not insist on its amendments . . . and agrees to the amendments made by the House in their place.
- That the Senate does not insist on its amendments. . .and has made further amendments in their place, in which it seeks the concurrence of the House.

In practice, the government will usually be seeking to resist amendments made in the Senate to which the House has disagreed, so the committee stage begins with a minister moving that the Senate **not** insist on those amendments.

If a majority of senators votes against the motion, the outcome is a reversal of the original proposition contained in the motion. Thus, if a majority votes **against** the motion that the Senate does not insist on its amendments, the effect is that the amendments **are** insisted on. (The situation is more complicated where votes are equally divided. This is described in the section "The effect of equally divided votes", below).

Some motions proposing responses to messages appear to be very complex. One example involved the following situation:

The Senate had made amendments to a House of Representatives bill to which the House had disagreed.

The Senate had insisted on some of its amendments and not on others. It had made amendments to replace the ones it had decided not to insist on.

The House insisted on disagreeing to the original amendments and also disagreed to the replacement amendments and sent a message accordingly.

As negotiations progressed, the government decided to move some further amendments in the Senate to replace one of the original amendments and one of the replacement amendments made by the Senate and also decided to support some of the amendments it had previously disagreed with in the House. When the message from the House was considered in committee of the whole, a minister moved the following motion:

That the committee:

- (a) does not insist on original amendments nos 3 to 7, 10 and 11 made and insisted on by the Senate to which the House of Representatives has insisted on disagreeing;
- (b) does not insist on replacement amendments nos 1 to 5 made by the Senate in place of its original amendments 1, 8 and 9 to which the House has disagreed; and
- (c) makes the following amendments in place of Senate replacement amendment no. 1 and original amendment no. 3:

[text of amendments].

Under [standing order 84\(3\)](#), the Chair may order a complicated question to be divided. Reasons for doing this include ensuring clarity of proceedings and providing an opportunity for senators to vote differently on different aspects of the question. In this example, the first part of the question was broken into three separate questions covering individual or small groups of amendments, and the second part into two. The third part was put separately as well, providing maximum flexibility to the committee in formulating a response to the message. The outcome was that the Senate agreed not to insist on some amendments, to insist on others, and to make further replacement amendments, a position accepted by the House.

In another example, the House had made extensive amendments to a Senate bill and had returned the bill to the Senate seeking the Senate's agreement to the amendments. In the Senate, various parties circulated amendments to the House amendments. The overarching question, that the Senate agree to the amendments made by the House, was divided into separate motions in respect of each of the House amendments. Senators then moved amendments to those amendments and the overarching question was determined step by step. The outcome was that the Senate agreed to the House amendments with further amendments, a position accepted by the House.

The scope of further amendments

Messages at the later stages of the legislative process focus on resolving areas of disagreement between the Houses. Therefore, the standing orders do not permit agreed areas of the bill to be revisited, except to make amendments that are relevant to or consequent upon the acceptance, amendment or rejection of a House amendment. However, if the House disagrees with Senate amendments to House bills, the Senate may propose new amendments as an alternative to the rejected ones.

The rules for dealing with bills returned by the House with outstanding areas of disagreement are contained in standing orders [126](#), [127](#), [132](#) and [134](#) and provide maximum freedom to the Senate to seek agreement with the House. Any actions outside the scope of these rules require

the suspension of so much of the standing orders as would prevent the action. For example, amendments not relevant to, or consequent upon, the acceptance, amendment or rejection of House amendments may not be moved without a suspension of standing orders (see [Guide No. 5—Suspension of Standing Orders](#)).

How many times can a bill be sent between the Houses?

There is theoretically no limit to the number of times a bill introduced in the House of Representatives can be sent back and forth between the Houses in an effort to reach agreement on it. In practice, the number of times a bill moves between the Houses is determined by the likelihood of agreement. If agreement is unlikely or impossible, either House may order a bill to be laid aside. However, even this action may not be terminal. In 1997-98, the Senate twice amended the Native Title Amendment Bill 1997 in terms that were unacceptable to the House, which laid the bill aside on two occasions. When further negotiations on the Senate's amendments led to a breakthrough, the House resurrected the bill by rescinding the motion to lay the bill aside, reconsidered the Senate's amendments and made further amendments reflecting the policy settlement. A message was then sent to the Senate requesting its agreement with the new position. This procedure obviated the need for both Houses to deal with a third bill through all stages.

The standing orders provide that a bill which originates in the Senate may be returned by the House with outstanding disagreements on a maximum of three occasions. If disagreements are unresolved on the bill's third return from the House, the Senate "shall order the bill to be laid aside, or request a conference" (see [standing order 127\(1\)](#)).

5. The effect of equally divided votes

[Section 23](#) of the Constitution provides that the President has an ordinary vote, rather than a casting vote, and that questions are determined by a majority of votes. If the votes are equally divided, the question is *lost* (see [Guide No. 3—Voting in the Senate](#)). This principle guarantees the equality of representation of the original states in the Senate. It is also fundamental in determining the form of question put by the chair during the various stages of the legislative process.

The aim of legislative deliberation is to determine whether a bill, its several component parts and any textual amendments have the support of a majority of the Senate. Thus the questions for each major stage of consideration take the following form:

That the bill be now read a first/second/third time.

If the votes are equally divided, the question is lost and, lacking majority support, the bill proceeds no further.

During committee of the whole, detailed consideration of the bill takes place and amendments may be proposed. Amendments take one of two forms:

- proposals to omit clauses; or
- proposals to make textual changes by omitting words, inserting or adding words, or omitting and substituting words.

Where a clause is proposed to be omitted, the question takes the form:

That the clause stand as printed.

This question is designed to test whether a majority of the committee is in favour of the clause remaining in the bill. An equally divided vote indicates the absence of a majority in favour; the question is therefore lost and the clause is removed from the bill. Putting the question in an apparently more straightforward way:

That the clause be omitted

would produce a flawed result on an equally divided vote. On such an outcome, the *question* would be lost and a clause which did not enjoy majority support would remain in the bill. Therefore, this form of the question is not used except where the Senate is *requesting* the House to make an amendment which the Constitution precludes the Senate from making itself (see [Guide No. 16](#)—Consideration of Legislation). Such *requests* must be supported by a majority.

The same principle underlies the form of the question used to determine the Senate’s response to messages from the House disagreeing with amendments made by the Senate, which usually takes the following form:

That the committee does not insist on its amendments to which the House of Representatives has disagreed.

As noted above, if a majority votes against this motion, the effect is that the amendments are insisted upon. However, if the votes are equally divided the effect is that the amendments are **not** insisted on. The rationale for this outcome is that the equally divided vote indicates that the amendments themselves are now not supported by a majority. If they were, the motion would have been defeated by a majority, possibly the same majority required to make the amendments in the first place. So the bill now proceeds without the amendments. When this occurs, the chair of committees makes a statement explaining the result of the vote.

A further complication arises if an amendment disagreed by the House is an amendment to omit a clause. An equally divided vote on the question that the Senate does not insist on such an amendment means that the clause itself still lacks the support of a majority. Therefore, the amendment to omit the clause is insisted on.

These principles were enunciated in rulings by President Sibraa in 1993 and were endorsed in a report of the Procedure Committee in 1994 (see [chapter 12](#) of *Odgers’ Australian Senate Practice*). They apply regardless of whether the question takes the form, “That the Senate does not insist..” or the form, “That the Senate insists...”.

6. Sending messages to the House of Representatives

Messages are automatically generated when actions by the Senate, for example in relation to legislation, require a response to or from the House. The sending of a message to the House may also be built into the terms of a resolution of the Senate.

[Standing order 154](#) provides that any senator may move a motion, without notice and at any time, that any resolution of the Senate be communicated by message to the House. The motion often includes the words “for concurrence” to indicate that the resolution is intended for the consideration of the House.

Need assistance?

For assistance with any of the matters covered by this guide, government senators or their staff should contact the Clerk Assistant (Table), on extension 3020 or ca.table.sen@aph.gov.au; and non-government senators or their staff should contact the Clerk Assistant (Procedure), on extension 3380 or ca.procedure.sen@aph.gov.au.

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19 Disallowance

Many Acts of Parliament delegate to the executive government the power to make detailed rules and regulations (*delegated or secondary legislation*) that supplement the parent Act and have the same legal force. Such rules and regulations are not passed directly by both Houses of the Parliament, as bills are, but either House may veto (or disallow) them. A plethora of similar types of instruments also exist, and the Senate has a role in overseeing some of these.

1. The disallowance of legislative instruments

The *Legislation Act 2003* (the Act) – formerly the Legislative Instruments Act – provides, among other things, for the disallowance of legislative instruments. It establishes the regime under which they are made, registered and published online, and also provides for compilations of instruments to be published and incorporating any amendments made to them.

What are legislative instruments?

Generally, an instrument is a legislative instrument if it is made under a power delegated by the Parliament and:

- it *determines* the law or alters the *content* of the law, rather than *applying* the law in a particular case; and
- it affects a privilege or interest, imposes an obligation, creates a right, or varies or removes an obligation or right.

Picking up that definition, section 8 of the Act defines each of the following as a legislative instrument:

- an instrument described or declared by a law to be a legislative instrument, for example by using language such as:
 - “The Minister may, by legislative instrument, determine conditions...” or
 - “An instrument made under subsection (1) or (2) is a legislative instrument.”
- an instrument registered on the Federal Register of Legislation as a legislative instrument;
- an instrument made under a power delegated by the Parliament that determines the law or alters its content, as noted above.

Legislative instruments are available on the [Federal Register of Legislation](#).

The Act also declares certain types of instruments – such as regulations – to be legislative instruments (s.10), as well as instruments made as ‘disallowable instruments’ under legislation in force before 1 January 2005, when the predecessor to the current Act commenced (s.57A). There are also various ways that instruments that would otherwise be legislative instruments may be declared not to be (s.8(6) to (8)), so that requirements for tabling and registration do not apply.

Requirements for registration and tabling of legislative instruments

The Federal Register of Legislation established under section 15A of the Act contains a complete record of registered Commonwealth laws, including Acts, legislative instruments, another category

of documents known as *notifiable instruments*, together with associated documents, such as explanatory memoranda for bills and explanatory statements for instruments. The Act provides for the registration and tabling of legislative instruments:

- as soon as practicable after making a legislative instrument, the rule-maker must lodge the instrument and its explanatory material for registration (s.15G) – instruments are not enforceable unless they are registered (s.15K(1)); and
- the Office of Parliamentary Counsel must arrange for the instrument to be tabled in each House within 6 sitting days of being registered (see s.38).

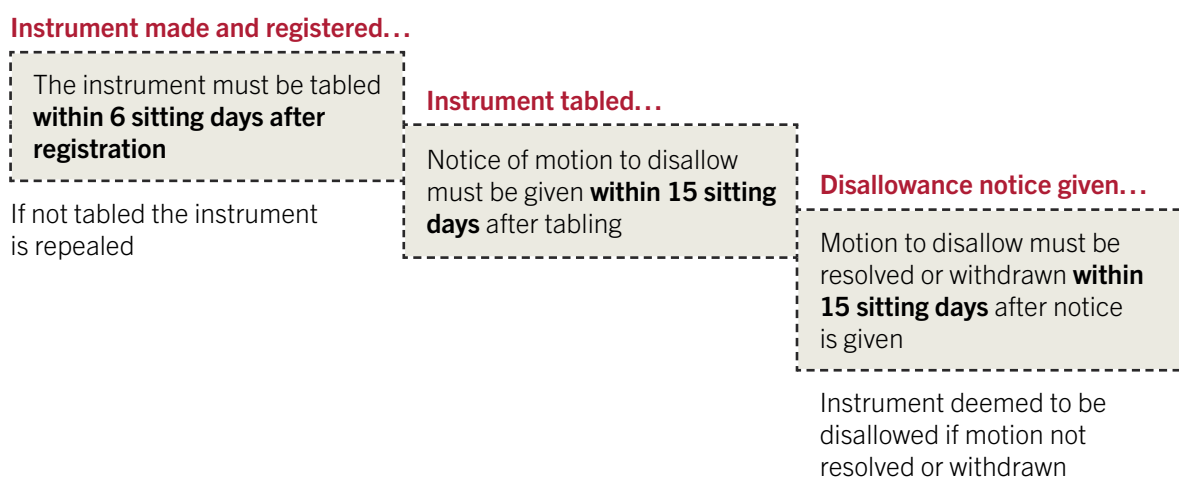
Even if these technical requirements are met, generally provisions of instruments do not operate retrospectively to disadvantage or impose liabilities upon any person, other than the Commonwealth (s.12(2)). Advice can be sought on this question, and it may be the subject of comment by committees which examine instruments (see below), however, the question is ultimately one for the courts and not the Senate.

The disallowance process

The Act provides the framework for the standard disallowance regime, which is reflected in the standing orders. The key features are as follows:

- within 15 sitting days after tabling a senator or member of the House of Representatives [but in practice usually the former] may give notice of a motion to disallow the instrument (in whole or in part) (s.42);
- if the motion is agreed to, the instrument is disallowed and it then ceases to have effect;
- if a notice of motion to disallow the instrument has not been resolved or withdrawn within 15 sitting days after having been given, the instrument is deemed to have been disallowed and it ceases to have effect;
- disallowance has the effect of repealing the instrument – if the instrument repealed all or part of an earlier instrument then disallowance also has the effect of reviving that part of the earlier instrument;
- an instrument ‘the same in substance’ cannot be made again (s46-48):
 - within 7 days after tabling (or, if the instrument has not been tabled, within 7 days after the last day on which it could have been tabled) (unless both Houses approve);
 - while it is subject to an unresolved notice of disallowance; and
 - within 6 months after being disallowed (without the approval of the House that disallowed the regulation).

Figure 1: Usual disallowance process



A single 'sitting day' can extend into the following day if a House sits beyond midnight. In other words, where a sitting day spills over to the following day it is only counted as one sitting day (even if this includes a period of suspension) (*Acts Interpretation Act 1901*, s.2M). For example:

The Senate begins sitting at 9 am on Thursday and extends (with or without a suspension of the sitting) until it is adjourned at 3 pm on Friday. Thursday is a sitting day for the Senate but Friday is not. This example applies equally to the House of Representatives.

2. Exemptions and unusual disallowance provisions

Legislative instruments may be exempted from the disallowance process by the Legislation Act, or a regulation made under that Act (s.44), or by the Act under which they are made. Some legislative instruments also have unusual disallowance provisions which may be specified in the Act under which they are made, so that for instance the time for giving notice or resolving a disallowance motion may vary. Advice should be sought on whether, and if so how, these instruments may be disallowed.

3. Standing order 78 – a safety valve

No action of the Senate can extend the usual 15 sitting day period available for giving a disallowance notice. However, the Senate's standing orders require a senator to give notice of his or her intention to withdraw a disallowance notice. This provides an opportunity for another senator to take over the disallowance notice even if the initial 15 days for giving notice has elapsed.

4. Scrutiny of Delegated Legislation Committee

This committee, established in 1932 as the Regulations and Ordinances Committee, scrutinises all instruments of delegated legislation to ensure that they:

- are made in accordance with the enabling Act, the Legislation Act and other applicable Acts
- do not trespass unduly on personal rights and liberties
- do not make rights and liberties of citizens unduly dependent on administrative decisions that are not subject to independent merits review; and
- do not contain matter more appropriate for an Act of Parliament.

For further information about the committee, see [chapter 15](#) of *Odgers' Australian Senate Practice*, or the committee's [web pages](#).

In 2019, the Senate agreed to modernise and overhaul the committee's ability to scrutinise delegated legislation, including instruments that require positive affirmation, or approval, by the Houses of Parliament. The changes also provide the committee with general inquiry and reporting powers, similar to other standing committees of the Senate.

5. Human Rights Committee

Statements of compatibility with human rights must be included in the explanatory statements for legislative instruments (s.15J). The Joint Committee on Human Rights examines all instruments against seven specified international human rights conventions and reports its findings to both Houses. For further information, see the committee's [web pages](#).

Disallowance notices

Notices of disallowance motions (other than those given by the Scrutiny of Delegated Legislation Committee) should be drafted by the relevant Senate officer (non-government senators: Clerk Assistant (Procedure) x 3380 or ca.procedure.sen@aph.gov.au; government senators: Clerk Assistant (Table) x 3020 or ca.table.sen@aph.gov.au).

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20 Parliamentary privilege

1. What is parliamentary privilege?

Parliamentary privilege is a function of the separate constitutional roles of parliament and the courts which enable these institutions to go about their business without being subject to outside interference or control.

The term “parliamentary privilege” refers to two aspects of the law relating to Parliament:

- the privileges or **immunities** of the Houses of the Parliament; and
- the **powers** of the Houses to protect the integrity of their processes, including the power to punish **contempts**.

These powers and immunities are fundamental to the operation of free institutions. They protect the right and ability of the Houses of the Parliament, and their committees, to carry out their functions of inquiring, debating and legislating without interference, and to deal effectively with any attempted interference.

The chief **immunity** from the ordinary law is the freedom of parliamentary debates and proceedings from question and impeachment in the courts. For example, members of Parliament cannot be sued or prosecuted for anything they say in debates; witnesses before parliamentary committees cannot be sued or prosecuted for giving evidence or for the content of the evidence they give.

The principal **powers** of the Houses are:

- the power to compel the attendance of witnesses, the giving of evidence and the production of documents; and
- the power to adjudge and punish contempts.

A **contempt** is a breach of the immunities of a House or any action which improperly obstructs a House or its members in the performance of their duties.

2. What is the legal framework?

[Section 49](#) of the Constitution declared the powers, privileges and immunities of the Commonwealth Parliament to be the same as those of the House of Commons of the United Kingdom at the time the Commonwealth was established. The Constitution also provided that the Commonwealth Parliament could declare its own privileges if it chose to do so.

A significant declaration of the Commonwealth Parliament’s privileges was made in the [Parliamentary Privileges Act 1987](#). This Act declares some important privileges, abolishes others and defines the penalties that a House may impose for contempt.

To supplement the Act, the Senate agreed in February 1988 to a series of resolutions - the “**Privilege Resolutions**”, which establish certain procedures for the Senate and its committees, including:

- procedures to protect the rights of witnesses
- procedures for the investigation of contempts; and
- criteria for determining matters relating to contempt.

The Senate Committee of Privileges, through its many inquiries into possible contempts, has established a body of precedents which assists the Senate to administer and interpret its privileges. The Committee's inquiries and findings, to December 2005, are summarised in its [125th report](#). Other reports, and advices from the Clerk of the Senate on privilege matters, may also be found on the Committee's [web pages](#).

3. Who and what is protected?

Parliamentary privilege protects those who participate in “proceedings in Parliament” from outside interference or suit. The basic protection is provided by article 9 of the Bill of Rights 1689:

That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any Court or place out of Parliament.

This protection is incorporated in Australian law by [section 49](#) of the Constitution and by [section 16](#) of the *Parliamentary Privileges Act 1987*.

“Proceedings in Parliament” defined

Section 16 of the Act defines “**proceedings in parliament**” to include all words spoken and acts done:

- in the course of
- or for purposes of
- or incidental to

the transacting of the business of a House or of a committee.

According to the definition, it includes:

- the act of giving evidence to a House or committee
- the evidence given
- the presentation or submission of a document to a House or committee
- the preparation of a document for purposes of or incidental to the transacting of the business of a House or committee
- formulating, making or publishing a document by or pursuant to an order of a House or committee; and
- the document formulated, made or published by or pursuant to such an order.

Examples

Examples of documents prepared for or incidental to the transacting of the business of a House or committee include:

- submissions to parliamentary committees
- draft questions to ministers (with or without notice)
- questions briefs or possible answers prepared by departments or agencies for their ministers or for their own appearances at Senate estimates; and
- letters from constituents which seek parliamentary action and which can be shown to have a direct connection with parliamentary proceedings – such as a request from a constituent to ask a question or raise a particular matter in debate (but see below).

Examples of documents or actions **not** covered include:

- general constituency correspondence, including with ministers, passing on concerns or issues raised by constituents – such as problems with government agencies or programs (but a qualified privilege may apply – see [chapter 2](#) of *Odgers' Australian Senate Practice*, under “Provision of information to members”.)

- the circulation of petitions (see the [11th Report of the Committee of Privileges](#)); and
- party or caucus meetings (including meetings of party or caucus committees).

Examples of documents formulated, made or published pursuant to an order of a House or committee include:

- business documents such as the *Notice Paper*, *Journals of the Senate* and the *Parliamentary Debates* (Hansard)
- answers to Senate questions on notice
- government reports ordered to be printed by a House
- committee reports; and
- correspondence or documents authorised for publication by a committee.

Note that publication of Hansard attracts absolute privilege, but the publication of *extracts*, such as part of an individual senator’s speech, does not. Publication of “pinks” (subedited drafts provided to senators to check their speeches) by a senator to a journalist (for example) may attract qualified privilege, along with press reports of proceedings, or the use of extracts of speeches in senators’ newsletters. For qualified privilege, see [chapter 2](#) of *Odgers’ Australian Senate Practice*, under “Qualified privilege”.

4. What is contempt?

A contempt is a breach of the immunities of a House or any action which improperly obstructs a House or its members or committees in the performance of their duties. The power to punish contempts is one of the major powers available to most parliaments to protect the integrity of their processes (the other main power being the inquiry power – to require the production of persons and documents).

Whether a person has committed a contempt is determined by a majority vote of the Senate, taken after at least 7 days’ notice ([Privilege Resolution 8](#)) and usually on the recommendation of the Privileges Committee after an inquiry has been conducted.

Contempts by senators

Examples of contempts that may be committed by senators include:

- failure to comply with the resolutions of the Senate relating to the [registration of senators’ interests](#) or the [registration of senators’ qualifications](#) under sections 44 and 45 of the Constitution
- unauthorised disclosure of draft committee reports, unpublished evidence or submissions, or committee deliberations
- asking for, obtaining or receiving a benefit in return for discharging the senator’s duties under outside influence; and
- disobeying a lawful order of the Senate or a committee (for example, to appear before a committee or produce documents to the Senate).

Some of these matters are also covered by the criminal law ([s.13](#), *Parliamentary Privileges Act 1987*; [s.141.1](#), *Criminal Code Act 1995*).

Contempts against senators

Examples of contempts that may be committed by other persons in relation to senators include:

- obstruction of a senator in the exercise of his or her duties
- improper influence of a senator; and
- molestation of a senator.

These contempts may cover such actions as a threat of legal action against a senator to prevent him or her raising a particular matter in the Senate.

Since the first such case of alleged intimidation of a senator was investigated by a select committee of privilege in 1904, the Senate has taken a fairly robust view as to whether senators have been improperly obstructed, probably on the basis that senators are capable of looking after themselves. The greater emphasis has been on the protection of other persons, particularly witnesses before committees, and on the integrity of committee processes.

Other common contempts

By far the most commonly investigated contempts involve conduct by or in relation to witnesses appearing before Senate committees, including:

- the giving of false or misleading evidence; and
- interference with witnesses (for example by punishing them for having given evidence or by giving them an inducement not to give evidence).

The Privileges Committee publishes [summaries](#) of the many cases of possible contempt which it has investigated.

Penalties

In the worst cases, contempt may be punished by a term of imprisonment or the imposition of a fine. The Senate has never imposed such a penalty. Other penalties include admonishment or, in appropriate cases, the withdrawal of access to facilities at Parliament House (for example, the Press Gallery).

5. Matters of privilege

What is a matter of privilege?

A matter of privilege is any action which may constitute a contempt of the Senate and which the Senate may refer to its Committee of Privileges for investigation. The potential or actual improper interference caused by such conduct with the ability of a House, its committees or its members to perform their functions is a key factor in adjudging whether a contempt has been committed.

The following are examples of possible contempts:

- a witness gives evidence to a committee that he or she knows to be false
- a government agency punishes one of its officers for giving evidence to a committee that goes against the official agency line
- a potential witness is given an inducement not to give evidence to a committee
- a key witness is uncooperative at a committee hearing and refuses to provide documents sought by the committee
- a person threatens legal action against a senator to prevent him or her raising a particular issue in the Senate
- a member of a committee gives a copy of the committee's draft report to a journalist; the journalist writes an article about the implications of the committee's proposed recommendations and the article is published before the report is tabled; or
- a member of a committee gives a copy of a confidential submission received by the committee to a Minister's office.

The Privilege Resolutions set out procedures for the investigation of contempts and the criteria for determining matters relating to contempt. [Resolution 6](#) sets out a non-exhaustive list of matters that may constitute contempts.

Raising matters of privilege

[Standing order 81](#) sets out the procedure for raising matters of privilege in the Senate for investigation. The first step is for the senator who intends to raise the matter of privilege to write to the President of the Senate describing the matter.

The President is required to consider the matter against criteria which are also set out in the Privilege Resolutions ([Resolution 4](#)). In determining, as soon as practicable, whether to give precedence to a notice of motion to refer the matter to the Committee of Privileges, the President must consider:

- the principle that the Senate’s power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for senators against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate; and
- the existence of any remedy other than that power for any act which may be held to be a contempt.

The President’s decision is conveyed to the senator and, in most cases, to the Senate. While the matter is under consideration by the President the senator concerned must not take any other action in relation to the matter or refer to it in the Senate.

In most cases, the President decides that the matter should be given precedence. After this decision is notified to the Senate, the senator concerned gives a notice of motion to refer the matter to the Committee of Privileges for inquiry and report. The notice appears at the top of the *Notice Paper* on the relevant day, under the heading “Matter of Privilege”. It is usually dealt with as formal business (see [Guide No. 8](#)—Notices of Motion) but if debate is required, a matter of privilege is dealt with ahead of all other categories of business (see [Guide No. 4](#)—Categories of Business). The question whether the matter be referred is then determined by the Senate.

If the President determines that a matter of privilege should not be given precedence, it remains open to the senator concerned to take any action that is in accordance with the rules of the Senate; for example, referring to the matter in debate or giving notice of a motion seeking specified action, including a reference to the Committee of Privileges. Again, it is then up to a majority of the Senate to decide if that action should be taken.

While only a senator may raise a matter of privilege (other than a right of reply or adverse reflection in committee evidence—see below), aggrieved persons may ask senators or committees to raise matters on their behalf.

6. The right of reply

[Privilege Resolution 5](#) sets out procedures for the protection of persons referred to in the Senate. The Senate was the first known legislature to provide persons referred to in proceedings with a right of reply where those persons felt adversely affected in reputation or in dealings with others, or injured in some sense, including by unreasonable invasion of their privacy.

Most Australian legislatures and others throughout the Commonwealth have now adopted similar procedures.

The right of reply consists of an opportunity for a person who claims to have been adversely affected through being named or otherwise identified in Senate proceedings to have a response incorporated in the parliamentary record. The person makes a submission to the President of the Senate requesting publication of a response. If the submission is not trivial or frivolous, the President refers it to the Committee of Privileges to ensure that the suggested response is not offensive and does not itself contain material that would unreasonably adversely affect or injure another person or invade their privacy or add to or aggravate any such adverse effect, injury or invasion of privacy.

The Committee does not inquire into the truth or merits of the statement in the Senate or the response, but if it is satisfied that a response should be published, it recommends that course of action to the Senate. All such recommendations have been accepted and the responses published in the Committee’s report and incorporated in *Hansard*.

The procedure does not apply to Senate committees which are governed by other procedures for dealing with evidence that adversely reflects on another person. These procedures, which are contained in paragraphs (11) to (13) of [Privilege Resolution 1](#), also ensure procedural fairness.

7. Senators and parliamentary privilege

This section collects together aspects of parliamentary privilege, and its interaction with the “ordinary law”, that may be of particular relevance to senators in the performance of their duties.

Freedom of speech

As noted above, the most significant immunity encompassed by the term “parliamentary privilege” is often referred to as freedom of speech in parliament: words uttered and acts done in parliament are not actionable in a court of law. For example, a person cannot take action for defamation against a member of parliament on the basis of words spoken in parliament.

However, the protection does not apply if a member of parliament repeats those words outside of parliamentary proceedings.

Effective repetition

There have also been cases in recent years where courts (erroneously, on the parliamentary view) have allowed reference to be made to parliamentary statements for the purpose of defamation actions, to establish the meaning of statements made outside parliament. Members of parliament who have said words to the effect of “I stand by what I said in the chamber” or, “I do not resile from what I said in the chamber” have been sued for defamation on the basis that they have effectively repeated outside the parliament what was said inside (see the [134th Report of the Committee of Privileges](#), Effective Repetition).

The responsibilities of free speech

The Senate also agreed to a resolution in 1988 that enjoined senators to use their great power of freedom of speech responsibly, and to take into account:

- the damage that allegations made in parliament can do to the subject of the allegations and the institution of parliament
- the limited opportunity available to persons other than members of parliament to respond to such allegations
- the need for senators to have due regard to the rights of others; and
- the desirability of ensuring that any adverse reflections on a person are soundly based.

This exhortation is contained in [Privilege Resolution 9](#).

Interaction between privilege and other laws

Apart from the immunities conferred by parliamentary privilege on senators in the exercise of their duties, senators are subject to the ordinary law like any other person (see [Guide No.22](#) – Provisions governing the conduct of senators).

[Section 15](#) of the *Parliamentary Privileges Act 1987* indicates that the police may exercise in the parliamentary precincts the powers which they possess under the ordinary law. Likewise, electorate offices are within the jurisdiction of the ordinary law.

Senators have no overall immunity from subpoenas, orders issued by courts or tribunals for the discovery of documents, or search warrants. However, the use before a court or tribunal of documents so obtained is restricted by the law of parliamentary privilege.

See [chapter 2](#) of *Odgers' Australian Senate Practice*, under “Subpoenas, search warrants and members” for a discussion of the case law supporting an effective immunity from compulsory production of documents where the documents are so closely connected with proceedings in parliament that their production would involve unlawful questioning or impeaching of those proceedings, contrary to [section 16](#) of the 1987 Act.

Search warrants

In the only relevant Australian case involving the execution of search warrants on a senator's offices (*Crane v Gething*, see [chapter 2](#) of *Odgers' Australian Senate Practice*, under “Subpoenas, search warrants and members”), the court said that it did not have jurisdiction to determine whether parliamentary privilege prevented the seizure of documents by the police because the issue of search warrants is an executive act, not a judicial proceeding. The matter was returned to the Senate to sort out, which it did by engaging an independent third party to assess the documents and determine which ones were covered by parliamentary privilege (on the basis that all parties would accept the umpire's determination).

Since then, the Presiding Officers have entered into a [memorandum of understanding](#) with the Attorney-General and Minister for Justice, endorsing an [Australian Federal Police Guideline](#) on the execution of search warrants in members' and senators' offices.

The guidelines provide an opportunity for senators to claim parliamentary privilege over particular documents uncovered in the course of the search, and for such documents to be sealed and provided to a neutral third party pending a determination of the claim of parliamentary privilege.

Those arrangements were tested for the first time during an AFP investigation into a suspected leak from NBNCo. Three search warrants were executed, and numerous documents seized. Claims of privilege made by a senator and a member were referred to the privileges committees of their respective Houses. Each committee recommended that the claims be upheld, and each House resolved that seized material be returned to the parliamentarians making the claim (see the [163rd](#) and [164th](#) reports of the Senate Committee of Privileges and the [report of the House Committee of Privileges and Members' Interests](#)). A similar outcome was reached in another matter arising in 2018 (see the Senate Privileges Committee's [172nd](#) and [174th](#) report).

Are there any other immunities that apply to senators?

In addition to the major immunity of freedom of speech in parliament there are some minor immunities that preserve senators' freedom to attend parliamentary business without interference from the courts.

These minor immunities (which, in practice, rarely arise or are of little significance) are:

- the immunity from arrest in civil (as opposed to criminal) causes (codified in section 14 of the *Parliamentary Privileges Act 1987*)
- the exemption from jury service (codified in the *Jury Exemption Act 1965*); and
- the exemption from compulsory attendance in a court or tribunal (also codified in section 14 of the 1987 Act and limited to 5 days either side of a meeting of a House or committee).

The basis of these immunities is that the Senate has first call on a senator, particularly on a sitting day. This is also the basis for a resolution regarding the detention of a senator.

Detention of a senator

A [resolution of the Senate](#) of 18 March 1987 declares that it is the right of the Senate to receive notification of the detention of its members (and the cause thereof) including:

- from a court, where a senator is held in custody pursuant to an order or judgment by the court
- from the Governor-General, if a senator is held in custody by order of a court martial or officer of the Defence Force; and
- from the police, if a senator has been arrested.

For more information, see [Senate Brief No. 11](#)—Parliamentary Privilege; [Chapter 2](#) of *Odgers' Australian Senate Practice*.

Need assistance?

Advice on any of the matters covered by this guide is available from the Clerk of the Senate on extension 3350 or clerk.sen@aph.gov.au. Specific advice on the operations of the Committee of Privileges is available from the Secretary on extension 3360 or priv.sen@aph.gov.au.

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21 Qualifications of senators and candidates for senate elections

Senators are chosen by the people of each state and territory voting as one electorate at periodic elections. The term of a senator representing a state is 6 years, while territory senators' terms coincide with the term of the House of Representatives.

The provisions governing the qualifications of candidates for election and of senators, once elected, are contained in the [Constitution](#) and the *Commonwealth Electoral Act 1918* (CEA). The purpose of these provisions is to ensure that the people who stand for, and are members of, the national Parliament are beholden to no-one but the electors as a whole and may therefore perform their duties free from undue external influence, including from the executive government, foreign governments and commercial pressures.

1. Candidates

To stand for either House, a person must be:

- at least 18 years old; and
- an Australian citizen; and
- an elector entitled to vote or a person qualified to become an elector.

In 1901, the requirements for qualification were different, but the Constitution gave the Parliament power to change these requirements and it has done so on several occasions (see [s.16](#) and [34](#) of the Constitution and [s.163](#) of the CEA).

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 (see [s.43](#) of the Constitution and [s.164](#) of the CEA). A person may not make multiple nominations ([s.165](#) of the CEA).

[Section 44](#) of the Constitution provides further limitations on eligibility. Broadly, a person cannot be chosen as a senator if he or she:

- is a citizen or subject of a foreign power; or
- is attainted of treason; or
- has been convicted and is under sentence, or subject to be sentenced, for an offence under Commonwealth or state law punishable by a prison sentence of 12 months or more; or
- is an undischarged bankrupt; or
- holds an office of profit under the Crown; or
- has a pecuniary interest in any agreement with the Commonwealth Public Service (except as a member of an incorporated company of more than 25 people).

Further, a person convicted of certain bribery or undue influence offences is disqualified from being chosen as a senator for 2 years after the conviction (see [s.386](#) of the CEA).

Following numerous cases during the 45th Parliament of sitting senators found to have been ineligible to stand as candidates, the [Commonwealth Electoral Act](#) was amended in 2019 to require candidates to complete a checklist relating to eligibility under section 44 of the Constitution as part

of the nomination process. The AEC is required to provide the documents relating to all successful candidates to the respective Houses for tabling.

The Senate subsequently established a [Register of Senators' Qualifications](#). The Register includes the material provided by the AEC, and similar statements made by any senators filling casual vacancies, (as well as the citizenship statements made by those senators in the 45th Parliament with six year terms).

2. Disqualification of senators

The place of a senator who becomes subject to any of the grounds for disqualification in [s.44](#) of the Constitution automatically becomes vacant. Disqualification also occurs if a senator becomes bankrupt or insolvent or if he or she takes, or agrees to take, any fee or honorarium for services to the Commonwealth or for services rendered in the Parliament on behalf of any person (see [s.45](#) of the Constitution). A monetary penalty may apply if a person continues to sit as a senator while disqualified.

3. Determination of disqualifications

There are two methods of challenging the qualifications of a senator. Under each method, challenges are determined by the High Court sitting as the Court of Disputed Returns (CDR).

The first method is under [sections 353 to 357](#) of the CEA, which provide that the Australian Electoral Commission, or any candidate or person qualified to vote, may petition the Court, within 40 days after the return of the writ (or, in the case of a casual vacancy, the notification of the choice or appointment) to examine the validity of the election, including the qualifications of candidates. The Court may examine the petition or refer it to a lower court. Possible outcomes include declarations that:

- a person returned as elected was not duly elected
- a candidate not previously returned as elected is now duly elected; or
- the election is void.

Secondly, the Senate may by resolution refer a question relating to the qualifications of a senator to the Court, under section 376 of the CEA. The motion is categorised as Business of the Senate and therefore has priority over other types of business at most times see [Guide No. 4—Categories of Business](#). The Court may declare that a senator is not qualified, or that a candidate was ineligible, and may declare that a vacancy exists. In 2017 and 2018, a number of senators were found to have been incapable of being chosen as senators at the 2016 election following the reference of questions under this method.

The [order of the Senate establishing the Register of Senators' Qualifications](#) seeks to constrain the circumstances in which referrals to the CDR may be proposed, although this procedural constraint is yet to be tested.

It was previously thought that a third method was available to challenge the qualifications of a senator, by initiating proceedings under [section 3](#) of the *Common Informers (Parliamentary Disqualifications) Act 1975* against a senator alleged to be disqualified. This Act supersedes [section 46](#) of the Constitution ([s.4](#)) and suits are heard in the original jurisdiction of the High Court ([s.5](#)). However, the High Court, in [Alley v Gillespie](#) [2018] HCA 11, held that an action under the Common Informers Act could succeed only where a senator or member had first been found ineligible under one of the other two methods, outlined above.

4. Grounds for disqualification

The High Court has adjudicated a number of aspects of [section 44](#) of the Constitution as it applies to both candidates and sitting senators and members. For a candidate, the critical point is nomination, which begins the process of being chosen ([Sykes v Cleary](#) (No. 2) (1992) 176 CLR 77). To be eligible for election, a candidate must be clear of any of the grounds for disqualification at the time of nomination ([Free v Kelly](#) (No. 2) (1996) 185 CLR 296); and must remain so until chosen ([Re Nash \[No 2\]](#) 2017 HCA 52, at 44-45).

As noted earlier, during the 45th Parliament a number of senators were found by the High Court, sitting as the Court of Disputed Returns, to have been incapable of being chosen, under section 44 of the Constitution. (For a summary of cases arising from the referral of senators to the Court, see: [Consideration of senators' qualifications in the Court of Disputed Returns and related matters](#)).

44(i): owes allegiance to a foreign power etc.

Prior to the 45th Parliament, it was generally understood that paragraph [44\(i\)](#) applies to a person who has formally or informally acknowledged allegiance, obedience or adherence to a foreign power and who has not withdrawn or revoked that allegiance ([Nile v Wood](#) (1988) 167 CLR 133). For these purposes, “foreign power” includes the United Kingdom ([Sue v Hill](#) (1999) 199 CLR 462). To qualify for election, it was not considered enough for a person to have become an Australian citizen unless that person had also taken **reasonable steps** to renounce foreign nationality ([Sue v Hill](#) (1999) 176 CLR 77). What amounted to reasonable steps would depend on the circumstances of the particular case ([Sykes v Cleary](#) (No. 2) (1992) 176 CLR 77).

In 2017, the High Court made orders and delivered its judgment on questions concerning the qualifications of six senators and one member of the House of Representatives ([Re Canavan](#) [2017] HCA 45). The Court adopted the **ordinary and natural language** of paragraph 44(i), consistent with the majority view in the previous leading case [Sykes v Cleary](#). In doing so, the Court distinguished between the first part of the provision (“acknowledgement of allegiance” etc.), which requires a **voluntary** act, and the second part (“a subject or a citizen...of a foreign power”), which involves a state of affairs **existing under foreign law**.

Each of the matters referred turned on the construction of the second part of the provision. The Court rejected the alternative interpretations put before it, which sought to introduce into the second part questions about an individual’s knowledge of their citizenship status and a degree of “voluntariness” in retaining foreign citizenship.

The Court held that paragraph 44(i) operates to render incapable of being chosen, or of sitting, persons who have the status of a subject or citizen of a foreign power, which is determined by the law of the foreign power in question. In these instances, the candidate does not need to be aware of their foreign citizenship status. Further, a person who at the time of nomination retains the status of a subject or citizen of a foreign power is disqualified by section 44(i) unless the operation of the foreign law is “contrary to the constitutional imperative that an Australian citizen not be irremediably prevented by foreign law from participation in representative government”. Finally, the Court held that where it could be demonstrated that a person had taken **all reasonable steps** that are **reasonably required by the foreign law to renounce** the foreign citizenship or subject status within the person’s power, the constitutional imperative of paragraph 44(i) is engaged ([Re Canavan](#) [2017] HCA 45, 72).

Four senators and the member were found to be foreign citizens at the time of nomination and so were ineligible to be elected. The senators’ places were subsequently filled by special counts of the ballots for the affected states. Three further references in 2017 saw three more senators disqualified on the same grounds.

In 2018, a further reference was made by the Senate to the Court (*Re Gallagher* [2018] HCA 17). The Court considered whether taking the steps necessary to renounce foreign citizenship prior to nomination, even though the renunciation was not registered until after the election, was enough to meet what had come to be known as the reasonable steps test.

In *Re Gallagher* the Court further developed the exception relating to the constitutional imperative, described in *Re Canavan* (above), holding that, where foreign law presents “something of an insurmountable obstacle” to renouncing citizenship, a person taking all reasonable steps to do so may avoid disqualification. However, the procedure for renouncing British citizenship was held not to be onerous. The issue for Gallagher was merely one of timing, and the reasonable steps exception could not apply. As the senator remained a dual citizen at the time of the election, the Court declared her incapable of being chosen and ordered that the resultant vacancy be filled by a special count of the ballot papers under the direction of a single justice.

44(ii): has been convicted and is under sentence etc.

For paragraph 44(ii) to apply, a person must have been convicted and be **either** serving a sentence **or** subject to be sentenced in relation to an offence punishable by imprisonment for one year or longer (*Nile v Wood* (1988) 167 CLR 133). A person is subject to be sentenced if he or she is awaiting sentencing, and also if he or she has been given a suspended sentence, subject to certain conditions being met. In *Re Culleton [No 2]* [2017] HCA 4 a person against whom a warrant had been issued to attend court for sentencing was held to be “convicted and...subject to be sentenced” for a disqualifying offence. The subsequent annulment of the conviction did not prevent the operation of paragraph 44(ii).

44(iii): is an undischarged bankrupt or insolvent

Paragraph 44(iii) refers to a person who has been declared bankrupt or insolvent and who has not been discharged from that condition (*Nile v Wood* (1988) 167 CLR 133). A senator or member who **becomes** bankrupt or insolvent while serving is disqualified under paragraph 45(ii). On 23 December 2016, the Federal Court ordered the sequestration of a senator’s estate (*Balwyn Nominees Pty Ltd v Culleton* [2016] FCA 1578), the prima facie effect of which was to cause the vacation of his office as a senator (*Culleton v Balwyn Nominees Pty Ltd* [2017] FCAFC8 at 1). The vacancy was notified after the President received documents recording the status of the senator as an undischarged bankrupt: [statement to the Senate](#), 7 February 2017.

44(iv): holds any office of profit under the Crown

Paragraph 44(iv) refers “at least” to a person who is permanently employed by government, including at the state level. Taking leave without pay does not alter the character of that employment (*Sykes v Cleary* (1992) 176 CLR 77). In *Re Lambie* [2018] HCA 6, the Court found that the offices of mayor and councillor held by a candidate were not “offices for profit under the crown”, turning on the degree of control an executive government might exercise over those positions.

44(v): pecuniary interest in any agreement with the Commonwealth public service

Paragraph 44(v) refers to a person who “has any direct or indirect interest in any agreement with the Public Service of the Commonwealth”. In a 1975 case, the High Court found that a senator who was a shareholder in a company that had an agreement with the Commonwealth Public Service was not disqualified. Barwick CJ, hearing the case alone, held that an agreement needed to cover a substantial period of time and be one under which the Crown could conceivably influence the contractor in relation to parliamentary affairs (*Re Webster* (1975) 132 CLR 270)

In *Re Day [No 2]* [2017] HCA 14, however, the Court found that *Webster* was decided on an overly narrow reading of the provision and should not be followed. The Court found that the purpose of paragraph 44(v) extends to ensuring that members “will not seek to benefit by such agreements or

to put themselves in a position where their duty to the people they represent and their own personal interests may conflict” (at [48]). The indirect pecuniary interest found to exist on the facts of the case sufficed for the Court to hold that Day was incapable of being chosen, or of sitting, as a senator.

While sections [44 and 45](#) refer specifically to candidates and members or senators, there are no safe grounds for concluding that they do not also apply to senators-elect (that is, senators who have been elected but whose terms have not begun).

For further information, see [chapter 6](#) of *Odgers’ Australian Senate Practice*.

5. Loss of place for non-attendance

The disqualification provisions in the Constitution and the CEA safeguard members of Parliament against undue influence. A person who succumbs to undue influence may be ruled ineligible to stand or may lose his or her place. Senators can also lose their places if they fail to attend the Senate for two consecutive months without permission. A parallel provision applies to members of the House of Representatives (see sections [20](#) and [38](#) of the Constitution). These provisions safeguard electors against absentee representatives but have applied only once since Federation (Senator Ferguson, QLD, 1903).

Need assistance?

For advice on any of the matters covered by this guide, senators or their staff should contact the Clerk of the Senate on extension 3350 or clerk.sen@aph.gov.au.

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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, or the Registrar of Senators' Interests on extension 3320 or senators.interests@aph.gov.au

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23 Provisions governing the conduct of senators in debate

[Guide No. 22](#) outlined constitutional provisions, rules of the Senate and statutory provisions regulating the conduct of senators and which operate as an enforceable code of conduct.

This issue considers those procedural rules (and some conventions) which govern the conduct of senators in the chamber and underpin the courtesies of debate. These rules are derived from standing orders, resolutions of the Senate and rulings of Presidents (which have the force of orders).

1. Role of the Chair

The role of the President and, by implication, any senator chairing the Senate, is to maintain order ([standing order 184\(1\)](#)).

When chairing the Senate, the Deputy President or a temporary chair of committees has all the powers of the President to maintain order, which includes the power to make rulings. They may also refer matters to the President.

If the President rises during a debate, any senator speaking or seeking the call must sit down and the Senate must be silent so that the President may be heard without interruption ([standing order 184\(2\)](#)). When the President is putting a question, senators must not walk out of or across the chamber ([standing order 184\(3\)](#)). These rules reinforce the authority of the chair and the requirement for senators to defer to the authority of the chair.

It is the responsibility of all senators to give assistance in upholding normal procedure and behaviour in the Senate.

2. Addressing the Chair

In the Chair, the President is addressed as “President” or “Mr/Madam President”. Likewise, the Deputy President is addressed as “Deputy President” or “Mr/Madam Deputy President”. A member of the panel of temporary chairs of committees appointed under [standing order 12](#) is addressed as “Acting Deputy President” or “Mr/Madam Acting Deputy President”. In committee of the whole, the form of address is “Chair” or “Mr/Madam Chair”.

3. The call

An inherent duty of the Chair is to allocate the call to speakers in a debate. Senators seeking the call should rise and address the President ([standing order 186\(1\)](#)). Subject to the practices of the Senate, if two or more senators rise to speak, the President gives the call to the senator who, in the President’s opinion, first rose in his or her place ([standing order 186\(2\)](#)).

The practices of the Senate in relation to the call were enumerated by the Procedure Committee in its Second Report of 1991. These practices were identified from presidential rulings and include the following:

- senators are usually called from each side of the chamber alternately
- the call is given to the Leader of the Government in the Senate and the Leader of the Opposition in the Senate before other senators
- a minister in charge of a bill or other matter before the Senate is usually given the call before other senators
- an Opposition senator leading for the Opposition in relation to a bill or other matter before the Senate is usually given the call before other senators
- leaders of other non-government parties are usually given the call before other senators, subject to the foregoing practices; and
- senators who have a right to the call under these practices are discouraged from seeking it if that would have the effect of closing the debate and other senators wish to speak.

These practices operate in descending order. For many debates, informal lists of speakers compiled by the whips' offices are circulated. Such informal lists are regarded as being subject to the above practices. They do not bind the Chair but are regarded as a guide.

4. Moving around the chamber

On entering or leaving the chamber, a senator is required to acknowledge the Chair ([standing order 185\(1\)](#)). This is done with a brief bow or nod. Senators are required to take their places and not linger in the passageways. Nor must they walk or stand between the Chair and the senator who is speaking, or between the Chair and the Table. The purpose of these rules is to reinforce the primacy of the Chair, to ensure physical orderliness and to preserve the line of sight between the Chair and the senator speaking.

Other standing orders reinforce the need for senators generally to be in their seats when in the chamber. Under [standing order 75](#), for example, senators rising to support a matter of public importance or urgency must rise in their places. After divisions are taken, senators are encouraged by the Chair to resume their seats or leave the chamber.

5. The right to speak

In any debate, senators may speak once on a question before the chair and once on an amendment. The mover of a substantive motion may speak in reply but there is no right of reply on a procedural motion (such as a motion to suspend standing orders). In committee of the whole, a senator may speak more than once but, if no other senator rises to speak, a senator who has spoken once may speak again for the allowed time but no longer continuously ([standing orders 188 and 189](#)). For more information, see [chapter 14](#) of *Odgers' Australian Senate Practice*.

If a senator is followed in debate by another senator who misquotes, misunderstands or misrepresents the first senator's speech, that senator may be heard again, without leave, to explain the misrepresentation, but no new material may be introduced and the matter may not be debated ([standing order 191](#)). This is the only other exception to the rule that senators may speak once in a debate (unless they are the mover). The explanation must occur before the question is put on the motion. Otherwise, senators may seek leave at a later time to make a personal explanation under [standing order 190](#) (see below).

6. Speaking in debate

In most debates, senators are subject to individual time limits and there is sometimes a total time limit on particular types of debate. When a senator is given the call, the clock is set to show the time remaining for that senator to speak. A [summary of time limits](#) is contained in the standing orders. Time limits may be modified by temporary orders.

Senators speak from their seats, subject to certain modifications that have been agreed to by Presidents ([standing order 48](#)) or by resolution of the Senate. For example, the front seat immediately to the right of the President may be occupied by the minister leading for the government on a particular item of business. Likewise, the front seat immediately to the left of the President may be occupied by the shadow minister leading for the opposition on a matter. Senators performing duty as whips may speak from the seat of the government or opposition whip.

When senators participate in a debate, they must address the Chair. Presidential rulings have established that it is disorderly to address other senators directly across the chamber. Any such remarks must be directed to the Chair and must refer to other senators only in the third person. This is regarded as a technique to encourage courteous and civilised debate which is characterised by “good temper and moderation”, according to the UK parliamentary authority, Erskine May.

Senators are not permitted to read speeches ([standing order 187](#)). This rule is regarded as a protection against senators reading out speeches that have been written by others, and as preserving the exchange of views which is the hallmark of true debate. Some exceptions are tacitly allowed, including the acceptance of ministers reading second reading speeches and statements prepared by officials. By presidential ruling, senators have been permitted to refer to “copious notes”. Lecterns on which to rest their “copious notes” are available to senators on request from the chamber attendants, again by presidential permission.

It is not in order for senators to hold up newspapers or placards in the chamber, or to wear T-shirts or other clothing bearing slogans. Senators may not have on their desks items which are offensive to other senators.

A senator speaking must resume his or her seat when directed to do so by the Chair. This may be because the senator’s time has expired or because the chair needs to deal with a point of order, or with disorder in the chamber ([standing order 197\(4\)](#)).

Debate is required to be relevant to the motion, albeit presidential rulings have always taken a wide view of relevance ([standing order 194\(1\)](#)). Exceptions are debate on a motion for an address-in-reply, for the first reading of a bill which the Senate may not amend, and for the adjournment of the Senate (standing orders [194\(2\)](#), [112\(2\)](#) and [53\(4\)](#)). Debate on these motions may refer to any matters.

7. Courtesies of debate

By its nature, debate governed by known procedural rules is inherently orderly and facilitates rational discussion of matters of all kinds, including matters on which opinions may be deeply and passionately divided. A hallmark of parliamentary debate is the application of certain protections to avoid inflammatory and argumentative discourse and to observe courtesies that are fundamental to respect for the institutions of government in its different manifestations.

[Standing order 193](#) therefore prohibits:

- disrespectful references to the King, the Governor-General or a State Governor, or references designed to influence the Senate in its deliberations
- reflections on votes of the Senate; and
- offensive words, imputations of improper motives or personal reflections against other Houses of Parliaments or their members, or judicial officers.

These rules underpin the maintenance of comity between the different arms and levels of government and apply to groups as much as to individuals. They do not apply to former members or former judicial officers.

It is for the Chair to determine what constitutes offensive words, imputations of improper motives or personal reflections, taking into account the connotations and context of the words used. When a senator is asked by the Chair to withdraw unparliamentary remarks, he or she must do so without qualification. It is not in order to quote unparliamentary language from a document.

The Senate was the first parliamentary body to provide persons aggrieved by references to them in proceedings with a right of reply. “Ordinary” people therefore have access to a remedy which provides for their response to be published in the same written medium as the offending remarks. The remedy has been granted by the Senate on more than 60 occasions, with a minimal rate of refusal.

In addition to these specific rules, various conventions have been traditionally observed but not recorded in standing orders, probably because they were regarded as so fundamental to civilised debate that they were taken as given. They include:

- senators remaining in the chamber to listen to responses to their own speeches and to other contributors to the debate; and
- senators informing the senator concerned if they intend to make an adverse reference to them in debate.

8. Interruption of speaker

Once a senator has been given the call, he or she may be interrupted only by another senator taking a point of order (or privilege), or drawing attention to the lack of a quorum ([standing order 197\(1\)](#)). In these cases, the Chair must attend to the point of order immediately or have the bells rung to form a quorum (standing orders [197\(3\)](#) and [52\(3\)](#)). The time taken to deal with a point of order or form a quorum does not come out of the speaking time of the interrupted senator or (unless the Senate is operating under a limitation of debate under [standing order 142](#) with a fixed concluding time) out of the total time available for the debate (standing orders [197\(6\)](#) and [52\(7\)](#)).

The rules protecting senators against interruption except in specified circumstances are also the basis for the protection against interjections. While Chairs exercise discretion and may allow interjections which enhance the debate, the Chair must protect senators against interjections if they so request. A senator with the call has the right to be heard. Hansard does not record interjections unless they are replied to or acknowledged by the senator speaking.

When debate is interrupted by the operation of a standing or other order (for example, at 2 pm for questions without notice), the business before the Chair automatically becomes an order of the day for a later hour or the next day of sitting and, where debate continues, the senator speaking is taken to have leave to continue when the debate resumes ([standing order 68\(2\)](#)). Where there is no right of continuation for an individual speaker (for example, on a motion to take note of a document or report), the matter is automatically adjourned without a question being put (standing orders [61\(3\)\(c\)](#) and [62\(4\)\(c\)](#)).

9. Personal explanations

By leave, a senator may explain matters of a personal nature when there is no question before the chair. Such matters may not be debated ([standing order 190](#)).

10. Tabling or incorporation of documents

Hansard is a record of debate. Ultimately it belongs to the Senate and the Senate therefore determines its contents. Thus, if a senator wishes to incorporate material in Hansard that has not been delivered orally in the chamber, then leave of the Senate is required. The convention is that a senator who wishes to incorporate material shows it to representatives of the various parties (generally, the whips) or independents to gain informal consent before seeking leave to have the material incorporated. For ministers incorporating further answers to questions without notice, this practice is not observed because the minister is responding to an expectation that additional or corrective material will be supplied as soon as possible.

While a minister has a right to table documents in pursuance of an obligation to be accountable for the conduct of public affairs ([standing order 166\(1\)](#)), other senators require leave of the Senate to table documents. The same conventions apply with respect to informal consultations before leave is sought.

11. Leave

Leave is the unanimous consent of senators present. Leave allows a motion otherwise requiring notice to be moved without notice ([standing order 88\(1\)](#)). Leave of the Senate is granted when no senator present objects to the moving of the motion or other course of action for which leave is sought ([standing order 88\(2\)](#)). While it is a common belief that “anything can be done by leave”, there are, in practice, some limitations on the ability of leave to overcome restrictions in the standing orders. For example, a question before the chair must be disposed of before an unrelated motion may be moved. In committee of the whole, leave cannot sanction the transaction of business that has nothing to do with the matter before the committee (such as the incorporation of a speech on an unrelated matter).

12. Broadcasting and photography

The Senate has authorised the broadcasting of its proceedings (including the broadcasting and rebroadcasting of excerpts) subject to certain conditions. Radio broadcasting by the ABC alternates between the Houses but the proceedings of both are available through the House Monitoring Service and [online](#).

Photography in the chamber is subject to the Presiding Officers’ [rules for media related activity](#) in Parliament House and its precincts. Neither senators nor advisers may take photographs or record proceedings on mobile phones or other electronic devices.

13. Electronic devices

Electronic devices are permitted in the chamber subject to rules issued by the President. The guiding principle is that the device must not disturb proceedings. Thus laptop or tablet computers, mobile phones and similar devices may be used in silent mode.

14. Advisers

It is up to senators who they admit into the relevant areas of the chamber reserved for advisers, but advisers are required to behave with decorum and not disturb proceedings.

15. Dress

There are no formal dress rules in the standing orders and the matter of dress is left to the judgment of senators, subject to any ruling by the President. Advisers are also expected to maintain appropriate standards of dress, but a resolution of the Senate indicates that advisers and media representatives are no longer required to wear coats.

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.

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