

The Senate

Procedure Committee

Joint meetings to receive addresses by foreign
heads of state

Reference of Tax Expenditures Statement to
estimates hearings

Third report of 2003

December 2003

© Commonwealth of Australia 2003

This document was produced from camera-ready copy prepared by the Office of the Clerk of the Senate and printed by the Senate Printing Unit, Parliament House, Canberra

MEMBERS OF THE COMMITTEE

Senator the Hon P Calvert
President of the Senate

Senator J Hogg
Deputy President and Chair of Committees, Chair

Senator the Hon R Hill
Leader of the Government in the Senate

Senator the Hon J Faulkner
Leader of the Opposition in the Senate

Senator L Allison

Senator the Hon I Campbell

Senator A Eggleston

Senator A Ferguson

Senator J Ludwig

Senator R Ray

THE SENATE
PROCEDURE COMMITTEE
THIRD REPORT OF 2003

The committee reports to the Senate on the following matters referred to the committee.

JOINT MEETINGS TO RECEIVE ADDRESSES BY FOREIGN HEADS OF STATE

On 28 October 2003, the Senate referred the following matter to the Procedure Committee:

The Senate requests the Procedure Committee to draw up rules which should apply to future joint meetings of the Parliament, if any.

On four occasions the Senate has agreed to meet in the House of Representatives chamber for the purpose of receiving addresses by foreign heads of state.

The first such occasion took place in 1991-2, and the address was by the then President of the United States, President George H.W. Bush. The practice was adopted on that occasion because the then Prime Minister had addressed the two Houses of Congress in Washington in accordance with the practice of those Houses, and the government wished to extend the same honour in the same form to the President. The procedure was therefore designed to reflect the American practice. The procedure was repeated with the visit of President Clinton in 1996. At that stage there appeared to be a widespread assumption that it was a procedure specifically adopted for visiting presidents of the United States, on the basis of extending to them the same honour as is conferred in Washington. Earlier this year, however, the Prime Minister decided to invite the President of the People's Republic of China, President Hu Jintao, to address the two Houses on the day after an address by President George W. Bush. There was some opposition to extending the procedure beyond presidents of the United States to other foreign heads of state, particularly of non-democratic countries, but the Senate agreed to honour the invitation extended by the Prime Minister.

These occasions were referred to as "joint meetings" to distinguish them from joint sittings under section 57 of the Constitution. Under that constitutional provision, the members of the Senate and the House of Representatives may meet and vote together on legislation which remains in disagreement between the two Houses after a simultaneous dissolution. The joint sitting is a special body constituted under that provision. There is no constitutional authorisation for senators and members of the House of Representatives to meet or vote together for any other purpose.

The procedure for the joint meetings was therefore designed on the basis that the occasions would be simultaneous meetings of the two Houses in the same place. The House of Representatives by resolution invited the foreign visitor to address it, and invited the Senate to meet in the House of Representatives chamber at the same time to receive the address. The Senate by resolution then invited the foreign visitor to address the Senate, and agreed to meet in the House of Representatives chamber for that purpose. The resolutions of the two Houses also provided that the Speaker would preside over the joint meeting and that the procedures

of the House of Representatives would apply to the joint meeting “so far as they are applicable”.

These provisions, which were clearly intended to provide a means of dealing with any procedural questions or disorder which might arise at the joint meetings, made somewhat fictional the underlying assumption that the occasions were simply simultaneous meetings of the two Houses, and turned them into something approaching joint sittings. There were significant potential problems in that regard. According to evidence given at the estimates hearing of the Finance and Public Administration Legislation Committee for the Department of the Senate on 3 November 2003, these problems were raised by the Clerk in 1991 with suggestions that alternatives to the joint meeting format should be adopted, but these suggestions were inconsistent with the intention to model the occasions as closely as possible on the Washington process.

The resolutions of the Houses created a situation of the Speaker, in effect, presiding over a meeting of the Senate, and the potential for the Speaker and House members to make decisions affecting the rights of the Senate and all senators.

These potential problems did not arise until the address by President George W. Bush on 23 October 2003. At the conclusion of the address, the Speaker “named” Senators Brown and Nettle for having committed an offence, namely, interjecting during the address and refusing to leave the chamber when directed to do so by the Speaker. The Speaker then called the Minister for Health and Ageing and Leader of the House of Representatives, Mr Abbott, who moved that the two senators “be suspended from the service of the House”. The Speaker declared this question carried on the voices (according to some accounts there were calls for a division by the number of senators and members required to call a division under the procedures of the House). The Presiding Officers then decided that, as the motion excluded the two senators from the chamber for 24 hours, this had the effect of excluding them from the meeting to receive the address of President Hu on the following day, and issued directions that the two were to be excluded from the meeting by security staff, if necessary using “preventative force”, and the senators were excluded from that meeting accordingly.

These events were also explored at the estimates hearing on 3 November 2003. It was pointed out that, by decision of the Speaker, and allegedly by vote of the assembled senators and members, two senators were excluded from a meeting of the Senate, not only a meeting at which these decisions were taken but a separate meeting on the following day. It was suggested that the provision for the procedures of the House of Representatives to apply to the joint meeting “so far as they are applicable” could not extend to empowering the Speaker and members of the House of Representatives to exclude senators from a meeting of the Senate. It was suggested that this might even become a justiciable question, and that these events indicated that there were insurmountable difficulties involved in the joint meetings practice. During the estimates hearing the President said that his understanding was that both joint meetings were conducted under the standing orders of the House of Representatives, and that that had been agreed to by the Senate and the House of Representatives. The President said in his evidence that, as the Speaker had been named in the resolutions of both Houses as chairman of the joint meeting, the President’s understanding was that the Speaker used his authority to ensure the proper conduct of proceedings. The President agreed at the estimates hearing that there is a wide divergence of views on joint meetings, and on the question of whether or not the House of Representatives standing orders did in fact apply.

The committee has been asked by the Senate to draw up rules for future joint meetings “if any”. This reference would appear to allow the committee to draw up rules for joint meetings of the kind that have previously occurred, or perhaps to suggest that joint meetings be abandoned and some alternative format for addresses by foreign heads of state be adopted.

It would be possible to draw up rules for these joint meetings which would seek to avoid problems which have been raised. For example, as was suggested at the estimates hearing on 3 November, it could be provided that, in cases of any procedural questions arising in the meeting of the Senate or any disorder on the part of senators, the President would rule on the matter and any subsequent decision would be taken only by the senators present. Any such rules, however, would need to be extremely elaborate to cover all possible issues which might arise and avoid all the potential difficulties, and would only make it more difficult for procedural questions or disorder to be dealt with in a satisfactory manner.

The committee considers that it would not be productive to attempt to draw up such rules and seek the agreement of the government to them.

In relation to the alternative of recommending that joint meetings be abandoned in favour of some other format, the committee accepts that the government is likely to want to continue with the practice, so that foreign heads of state may be received and may deliver addresses in a recognisably parliamentary context, in the House of Representatives chamber. It is open to the government to continue with the practice even if the Senate chooses not to participate.

The committee therefore suggests that the procedure for the occasions be changed so that they would be meetings of the House of Representatives in the House of Representatives chamber, which senators would be invited to attend as guests, and not formal meetings of the Senate. This would not change the appearance of the occasions, but would avoid the problems of the joint meetings. Senators would not be under the same obligation to attend as for sittings of the Senate. It would also allow the extension of formal invitations to other categories of office-holders, such as members of the High Court and the diplomatic corps. According to the evidence at the estimates hearing on 3 November, this alternative was also suggested in 1991 as a means of avoiding the problems of the joint meetings.

The committee therefore **recommends** that the Senate pass a resolution expressing its opinion that future addresses by foreign heads of state should be received in this manner, and that the resolution be forwarded to the House of Representatives so that the government can consider this proposal whenever any future occasions arise.

The following resolution is proposed:

That the Senate considers that any future parliamentary addresses by visiting foreign heads of state should be received by a meeting of the House of Representatives in the House chamber, to which all senators are invited as guests.

REFERENCE OF TAX EXPENDITURES STATEMENT TO ESTIMATES HEARINGS

Senator Murray has suggested that the annual Tax Expenditures Statement be formally referred to the legislation committees for consideration at their estimates hearings, together with the other appropriations documents which are referred to the committees.

There is nothing to prevent the Taxation Expenditures Statement being referred to at estimates hearings under current procedures, as the information contained in the statement relates to the operations and financial positions of departments and agencies, but Senator Murray has suggested that the statement be formally referred.

The basis of this suggestion is that taxation expenditures, as revealed in the Statement, have a significant effect on the budget and the expenditures and activities of departments and agencies, and should be formally a part of the committees' consideration of the estimates.

The committee accepts this suggestion, and **recommends** that the Senate pass a continuing order to refer the document to the estimates hearings. The following resolution is suggested:

The annual Tax Expenditures Statement stands referred to legislation committees for consideration by the committees during their examination of the estimates of government expenditure under standing order 26.

John Hogg
Deputy President
Chair of the Committee