

The Senate

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Procedure Committee

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Recording of pairs

First report of 2022

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# Procedure Committee

## First report of 2022

### Recording of pairs

1.1 On 29 November 2021 the following matter was referred to the Procedure Committee:

(1) That the Senate notes that:

(a) the legislative power of the Commonwealth is vested in a Federal Parliament;

(b) this power is exercised through a vote in each chamber of the Parliament;

(c) a senator can influence the outcome of a vote by sitting on the ‘yes’ or ‘no’ side of the Senate chamber, by having themselves paired, or by being absent from the vote;

(d) pairing, which is not publicly recorded, masks if a senator is paired as a ‘yes’ or ‘no’ and this situation is exacerbated with other parties and independents who have no-one present in the chamber for the vote or if a senator decided to abstain (including a senator who decides to abstain in contrast to their party’s vote or a senator who had indicated publicly they will vote in a particular way and then changes their mind);

(e) only Government and Opposition parties are aware of pairing arrangements, with votes being taken without other parties and independent senators being informed or appraised of how individual senators are paired; and

(f) every Australian has the right to see how each of their Senate representatives has influenced the outcome of a vote.

(2) That all parties and independent senators be included in the existing whips pairing sheet arrangements.

(3) That this matter be referred to the Procedure Committee for inquiry and report by 2 December 2021.

The reporting date was later extended to 10 February 2022.

1.2 The committee sought submissions from whips, managers and independent senators, and received submissions from the Australian Greens Whip, Senator McKim and from Senator Patrick. Those submissions each identified the two matters of transparency relevant here: the public reporting of pairs and transparency of pairing instructions.

## **Discussion**

1.1 As noted in *Odgers' Australian Senate Practice*, pairing is an informal arrangement:

whereby a senator who is absent and who is expected to vote on one side in a particular question is 'paired' with a senator who is expected to vote on the other side and who is either also absent or who deliberately does not vote in order to cancel out the effect of the other senator's absence. [[14th ed., p. 293](#)]

1.2 The rationale is that decisions of the Senate should not be determined by misadventure or by the fortuitous absence of a senator, but should reflect the composition of the Senate as elected. In the Senate, pairs have generally been provided when the government and opposition vote on different sides, but not when the government and opposition vote together. Extended pairing arrangements have been in place during the pandemic, as the rules adopted to allow senators to participate by video link do not allow them to vote.

1.3 On 1 September 2020, the Leaders of the Government and Opposition in the Senate made statements affirming the desirability of maintaining pairs and indicating their agreement on steps to ensure the transparency of pairing arrangements, particularly where all members of one party were participating remotely. The agreement rested on senators seeking a pair providing written instructions to that effect. Those statements indicated that – particularly during hybrid sittings – pairing instructions from senators not otherwise represented in the chamber during a division should be transparent, provided in writing and made available equally to whips of all parties upon request: SD 1/9/2020, pp. 4515-6.

1.4 Further questions about transparency in pairs arose during the final sitting fortnight in 2021, when two government senators indicated they would not vote with the government. At first the scope of their intentions was not clear, but each later provided statements indicating they would withhold their votes on legislative, but not procedural, matters. Those statements were tabled on 24 November. Crossbench senators later initiated this reference.

## **Informal arrangement**

1.5 Odgers notes that pairing arrangements are determined by the Whips and 'are entirely an informal arrangement between the parties and not part of the procedures of the Senate. The chair therefore does not consider any matters relating to pairs'. [[Odgers, 14<sup>th</sup> ed., p. 293](#)]

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1.6 The committee does not consider that it is necessary to formalise pairing arrangements, but agrees that additional transparency is warranted, and can be provided as discussed below.

### **Recording of pairs in Hansard**

1.7 The terms of reference state that pairs are not publicly recorded, however, since the first Parliament, lists of pairs have generally been included in the voting lists in *Hansard*. That practice relies on pairs lists being provided to *Hansard* staff. As the President noted in a statement to the Senate on 25 November 2021, that practice ceased when *Hansard* reporters stopped attending the Senate chamber during the early stages of the COVID pandemic. Arrangements were subsequently made to resume recording pairs in the *Hansard*.

1.8 The committee endorses this practice, and thanks the whips' offices for establishing the necessary arrangements to ensure pairs lists are again provided to the relevant staff.

### **Transparency of arrangements**

1.9 The terms of reference also note the difficulties caused where parties or independent senators do not have a senator present in the chamber. The committee considers that, where independent senators or smaller parties are paired, their voting intentions should be made available to all whips. The committee asks party whips to establish arrangements for this to occur.

1.10 Similar arrangements should be made to provide transparency in unusual situations, such as where senators have signalled their intention to vote contrary to their party's position.

1.11 The committee takes this opportunity to reiterate the importance of pairing to ensuring the smooth operation of the Senate and the need for all senators to cooperate to ensure that the informal arrangements that facilitate it can continue.

Senator Sue Lines  
**Chair**