



AUSTRALIAN SENATE

CLERK OF THE SENATE

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11 May 2009

The Hon Johan Scheffer MLC
Chair
Law Reform Committee
Parliament of Victoria
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

Dear Mr Scheffer

REVIEW OF THE MEMBERS OF PARLIAMENT (REGISTER OF INTERESTS) ACT 1978

Thank you for your letter of 17 April 2009 concerning your committee's review of the *Members of Parliament (Register of Interests) Act 1978*.

The President of the Senate has asked that I respond also on his behalf to your letter of the same day addressed to him.

The following sets out the situation in relation to the Senate in respect of matters referred to in your letter.

The Senate has no separate code of conduct as such. There are, however, a range of orders of the Senate governing the conduct of senators and the registration of interests and gifts. Attached is a document (one of a series called *Brief Guides to Senate Procedure*) which lists the provisions governing the conduct of senators. In addition to the orders of the Senate to which I refer, the document refers to relevant constitutional and statutory provisions. (The texts of the provisions may be obtained through the links in the electronic version of the document.)

As the document indicates, the Senate has a system of registration of senators' interests, set out in resolutions of the Senate first adopted in 1994 and since amended. There is also a resolution governing the receipt and registration of institutional gifts to the Senate or Parliament, adopted in 1997 and subsequently amended. The texts of these resolutions are also attached for your convenience.

I proceed to the particular issues in which your committee has an interest, as listed in your letter.

Advice

Senators are able to seek advice about the arrangements and their application from the Senate officer who is designated as the Registrar of Senators' Interests, currently the Deputy Clerk of the Senate. That advice is given on the basis that it is a senator's responsibility to determine the interests they should register in accordance with the resolutions of the Senate. Senators are, of course, able to seek advice from their colleagues or from any other source. The Committee of Senators' Interests issues guidance on interpretation and application of the provisions of the resolutions.

Training

The orientation courses provided for senators when they first commence their term of office include guidance on the interpretation and application of the resolutions.

Complaints

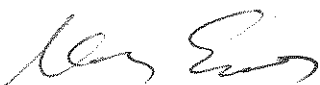
The resolutions provide that knowingly failing to provide statements in accordance with the resolutions and knowingly providing false or misleading information under the resolutions is a serious contempt of the Senate, and that any determination of such a contempt must be preceded by an inquiry and report by the Privileges Committee. Inquiries by the Privileges Committee are initiated in accordance with Senate standing order 81, which provides for any privilege matter to be raised with the President of the Senate and for the President to determine whether a motion in the Senate to refer the matter to the Privileges Committee should have precedence. Also attached is a copy of Senate standing order 81 and Senate Privilege Resolution 4 containing the provisions governing these processes.

Past investigations

There has been only one formal investigation by the Privileges Committee of alleged failures to properly register interests. The committee found that the failures were inadvertent, and no further action was taken. On other occasions cases of alleged failure by senators properly to register interests have been raised, but have been resolved by remedial action by the senator concerned.

I hope that this information is of use to your committee. Please let me know if the committee requires any elaboration of this material or any further information.

Yours sincerely



(Harry Evans)

EXTRACT FROM STANDING ORDERS AND OTHER ORDERS OF THE SENATE

Senators' interests

1 Registration

(1) Within:

- (a) 28 days after the first meeting of the Senate after 1 July first occurring after a general election; and
- (b) 28 days after the first meeting of the Senate after a simultaneous dissolution of the Senate and the House of Representatives; and
- (c) 28 days after making and subscribing an oath or affirmation of allegiance as a senator for a Territory or appointed or chosen to fill a vacancy in the Senate;

each senator shall provide to the Registrar of Senators' Interests a statement of:

- (a) the senator's registrable interests; and
- (b) the registrable interests of which the senator is aware:
 - (i) of the senator's spouse or partner, and
 - (ii) of any children who are wholly or mainly dependent on the senator for support;

in accordance with this resolution and in a form determined by the Committee of Senators' Interests from time to time, and shall also notify any alteration of those interests to the Registrar within 35 days of that alteration occurring.

(2) Any senator who:

- (a) knowingly fails to provide a statement of registrable interests to the Registrar of Senators' Interests by the due date;
- (b) knowingly fails to notify any alteration of those interests to the Registrar of Senators' Interests within 35 days of the change occurring; or
- (c) knowingly provides false or misleading information to the Registrar of Senators' Interests;

shall be guilty of a serious contempt of the Senate and shall be dealt with by the Senate accordingly, but the question whether any senator has committed such a serious contempt shall first be referred to the Privileges Committee for inquiry and report and may not be considered by any other committee.

(17 March 1994 J.1421, amended 15 September 2003 J.2365, 10 August 2006, J.2457)

2 Registrable interests of spouses or partners and dependants

Statements of the registrable interests of a senator's spouse or partner or of any dependent children submitted in accordance with paragraph (1) shall be maintained in a separate part of the register and shall remain confidential to the Committee of Senators' Interests except where the committee considers that a conflict of interest arises, at which time the committee may table the declaration.

(17 March 1994 J.1421)

3 Registrable interests

The statement of a senator's registrable interests to be provided by a senator shall include the registrable interests of which the senator is aware of the senator's spouse or partner and of any children who are wholly or mainly dependent on the senator for support, and shall cover the following matters:

- (a) shareholdings in public and private companies (including holding companies) indicating the name of the company or companies;
- (b) family and business trusts and nominee companies:
 - (i) in which a beneficial interest is held, indicating the name of the trust and the nature of its operation and beneficial interest, and
 - (ii) in which the senator, the senator's spouse or partner, or a child who is wholly or mainly dependent on the senator for support, is a trustee (but not including a trustee of an estate where no beneficial interest is held by the senator, the senator's spouse or partner or dependent children), indicating the name of the trust, the nature of its operation and the beneficiary of the trust;
- (c) real estate, including the location (suburb or area only) and the purpose for which it is owned;
- (d) registered directorships of companies;
- (e) partnerships, indicating the nature of the interests and the activities of the partnership;
- (f) liabilities, indicating the nature of the liability and the creditor concerned;
- (g) the nature of any bonds, debentures and like investments;
- (h) saving or investment accounts, indicating their nature and the name of the bank or other institutions concerned;
- (i) the nature of any other assets (excluding household and personal effects) each valued at more than \$7 500;
- (j) the nature of any other substantial sources of income;
- (k) gifts valued at more than \$750 received from official sources (such sources being an Australian or foreign national, state, provincial or local government or a person holding an office in such a government) or at \$300 or more where received from other than official sources, provided that a gift received by a senator, the senator's spouse or partner or dependent children from family members or personal friends in a purely personal capacity need not be registered unless the senator judges that an appearance of conflict of interest may be seen to exist;
- (l) any sponsored travel or hospitality received where the value of the sponsorship or hospitality exceeds \$300;
- (m) being an officeholder of or financial contributor donating \$300 or more in any single calendar year to any organisation; and
- (n) any other interests where a conflict of interest with a senator's public duties could foreseeably arise or be seen to arise.

(17 March 1994 J.421, amended 21 June 1995 J.3473, 15 September 2003 J.2365)

4 Register and Registrar of Senators' Interests

- (1) At the commencement of each Parliament, and at other times as necessary, the President shall appoint an officer of the Department of the Senate as the Registrar of

Senators' Interests and that officer shall also be secretary of the Committee of Senators' Interests.

- (2) The Registrar of Senators' Interests shall, in accordance with procedures determined by the Committee of Senators' Interests, maintain a Register of Senators' Interests in a form to be determined by that committee from time to time.
- (3) As soon as possible after the receipt of statement of registrable interests in accordance with resolution 1(1), the chairman of the Committee of Senators' Interests shall table in the Senate a copy of the completed Register of Senators' Interests and shall also table every 6 months any notification by a senator of alteration of those interests.
- (4) The Register of Senators' Interests shall be available for inspection by any person under conditions to be laid down by the Committee of Senators' Interests from time to time.
- (5) That part of the Register of Senators' Interests relating to spouses or partners and dependent children shall remain confidential to the Committee of Senators' Interests as provided for in paragraph 2.

(17 March 1994 J.1421, amended 15 September 2003 J.2365)

5 Interpretation

For the purposes of paragraphs 1 to 4 of this resolution "partner" means a person who is living with another person in a *bona fide* domestic relationship.

(17 March 1994 J.1421, amended 22 November 1999 J.2008)

Note: The resolutions adopted on 17 March 1994 included a resolution relating to the declaration of interests in debate and other proceedings. That resolution was amended on 13 May 1998 J.3753, and subsequently omitted on 15 September 2003 J.2365.

Receipt of gifts – declaration

The Senate resolves that the following procedures apply for the declaration by senators of their receipt of any gift intended by the donor to be a gift to the Senate or the Parliament:

- (1) (a) Any senator, including any Senate office holder and any senator who is a leader or a member of a parliamentary delegation, who in any capacity receives any gift which is intended by the donor to be a gift to the Senate or the Parliament must, as soon as practicable, place the gift in the custody of the Registrar of Senators' Interests and declare receipt of the gift to the Registrar.
- (b) A gift is to be taken as intended to be a gift to the Senate or the Parliament where:
 - (i) the donor expressly states that the gift is to the Senate or to the Parliament; or
 - (ii) the identity of the donor, the nature of the occasion, or the intrinsic significance or value of the gift is such that it is reasonable to assume that the gift was intended for the Senate or the Parliament.
- (ba) In the absence of express intent, it will not be assumed that a gift was intended for the Senate or the Parliament where the gift has a value below the following thresholds:
 - (i) \$750 when given by an official government source; or

- (ii) \$300 when given by a private person or non-government body on any occasion when the senator is present in his or her capacity as a senator, Senate office holder or delegation leader or member.
- (bb) In the absence of express intent, it will not be assumed that a gift was intended for the Senate or the Parliament merely because the gift has a value above those thresholds.
- (c) The Registrar of Senators' Interests is to maintain a public Register of Gifts to the Senate and the Parliament.
- (d) The Committee of Senators' Interests is to recommend to the President whether, and how, the gift may be used or displayed in Parliament House, including in the office of any senator, or used or displayed on loan elsewhere, including in a museum, library, gallery, court building, government building, government office or other place.
- (e) Where a gift given to a senator is intended to be for the Parliament, the President is to consult with the Speaker prior to agreeing to a recommendation of the committee as to its use, display or loan.
- (f) Where the President disagrees with a recommendation of the committee, the President is to report the disagreement to the Senate, which may determine the use, display or loan of the gift in question.
- (g) In making recommendations the committee is to take into account the intention of the Senate that gifts are to be used, displayed or loaned in a way which:
 - (i) reflects proper respect for the intentions of the donor and the dignity of the Senate or the Parliament;
 - (ii) recognises the interest of the public in gifts to the Senate or the Parliament; and
 - (iii) takes account of practical issues including space, custody, preservation and propriety in the use, display or loan of such gifts.
- (h) Where a senator is uncertain of the nature of a gift the senator may request advice from the committee.
- (i) When a senator who is using or displaying a gift ceases to be a senator, the senator may retain the gift:
 - (i) if its value does not exceed the stated valuation limits of \$750 for a gift received from an official government source, or \$300 from a private person or non-government body; or
 - (ii) if the senator elects to pay the difference between the stated valuation limit and the value of the gift, as obtained from an accredited valuer selected from the list issued by the Committee for Taxation Incentives for the Arts. The Department of the Senate will be responsible for any costs incurred in obtaining the valuation.
- (j) If the senator does not retain the gift in accordance with paragraph (i), the senator must return the gift to the Registrar, who shall:
 - (i) dispose of it in accordance with instructions from the Committee of Senators' Interests, as set out in paragraph 1(d) of this resolution; or

- (ii) arrange its donation to a nominated non-profit organisation or charity, at the discretion of the senator who has returned the gift and the Committee of Senators' Interests.
 - (k) Any senator subject to paragraph (j) must formally acknowledge relinquishment of the senator's claim to ownership of any surrendered gifts.
 - (l) Where a senator disagrees with the advice of the committee the senator is to report the disagreement to the Senate, which may determine the nature of the gift and its use, display or loan, if any.
 - (m) In paragraph (1) a reference to a gift to the Parliament includes a gift given to a senator for the House of Representatives.
- (2) This resolution applies to a gift received by the spouse, family member or staff member of a senator on any occasion when the senator is present in his or her capacity as a senator, Senate office holder or delegation leader or member, as if the gift had been received by the senator.
- (3) The committee:
- (a) is empowered to consider any matter placed before it pursuant to this resolution, and for the purposes of this resolution the committee has the powers provided in the resolution of 17 March 1994 establishing the committee; and
 - (b) may make, and must as soon as practicable thereafter table, procedural rules to facilitate the operation of this resolution.
- (4) Any senator who:
- (a) knowingly fails to tender and declare a gift that is taken to be a gift to the Senate or the Parliament as required by this resolution; or
 - (b) knowingly fails to return to the Registrar a gift which it was agreed or determined the senator might use or display; or
 - (c) knowingly provides false or misleading information to the Registrar or the committee,

is guilty of a serious contempt of the Senate and is to be dealt with by the Senate accordingly, but the question whether any senator has committed such a contempt is to be referred to the Privileges Committee for inquiry and report and may not be considered by any other committee.

(26 August 1997 J.2324, amended 8 December 1999 J.2212, 15 September 2003 J.2365)

EXTRACT FROM STANDING ORDERS AND OTHER ORDERS OF THE SENATE

81 Privilege motions

A matter of privilege, unless suddenly arising in relation to proceedings before the Senate, shall not be brought before the Senate except in accordance with the following procedures:

- (1) A senator intending to raise a matter of privilege shall notify the President, in writing, of the matter.
- (2) The President shall consider the matter and determine, as soon as practicable, whether a motion relating to the matter should have precedence of other business, having regard to the criteria set out in any relevant resolution of the Senate.
- (3) The President's decision shall be communicated to the senator, and, if the President thinks it appropriate, or determines that a motion relating to the matter should have precedence, to the Senate.
- (4) A senator shall not take any action in relation to, or refer to, in the Senate, a matter which is under consideration by the President in accordance with this resolution.
- (5) Where the President determines that a motion relating to a matter should be given precedence of other business, the senator may, at any time when there is no other business before the Senate, give notice of a motion to refer the matter to the Committee of Privileges, and that motion shall take precedence of all other business on the day for which the notice is given.
- (6) A determination by the President that a motion relating to a matter should not have precedence of other business does not prevent a senator in accordance with other procedures taking action in relation to, or referring to, that matter in the Senate, subject to the rules of the Senate.
- (7) Where notice of a motion is given under paragraph (5) and the Senate is not expected to meet within the period of one week occurring immediately after the day on which the notice is given, the motion may be moved on that day.

EXTRACT FROM STANDING ORDERS AND OTHER ORDERS OF THE SENATE

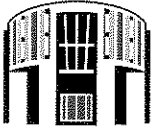
Parliamentary Privilege

Resolutions agreed to by the Senate on 25 February 1988

4 Criteria to be taken into account by the President in determining whether a motion arising from a matter of privilege should be given precedence of other business

Notwithstanding anything contained in the standing orders, in determining whether a motion arising from a matter of privilege should have precedence of other business, the President shall have regard only to the following criteria:

- (a) 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
- (b) the existence of any remedy other than that power for any act which may be held to be a contempt.



NO. 23—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.

This Brief 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 and other orders of the Senate)
- rules which determine entitlements (a field which is largely the responsibility of the Department of Finance and Deregulation, and the subject of separate guidance from that department).

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 Brief Guide No.19—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

Privilege resolution No. 6(3) 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

—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.

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.

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)
- 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)
- section 136.1 (making false or misleading statements in applications for Commonwealth benefits).

Commonwealth Electoral Act 1918

—The electoral process

The *Commonwealth Electoral Act 1918* contains a number of provisions imposing obligations and prohibitions on participants in the electoral process. The following provision may be thought to have particular significance for senators:

- section 327 – which prohibits interference with political liberty.

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 (section 43 of the Constitution, section 164, Commonwealth Electoral Act). A person may not make multiple nominations (section 165, Commonwealth Electoral Act).

A person convicted of certain bribery or undue influence offences is disqualified from being chosen as a senator for two years after the conviction (section 386, Commonwealth Electoral Act).

5. Need assistance?

For further assistance on any of the matters covered by this Brief Guide, contact the Clerk of the Senate on extension 3350.

JULY 2008

This publication is available online at <http://www.aph.gov.au/senate/pubs/guides/index.htm>. The online version contains hyperlinks to various other sources.