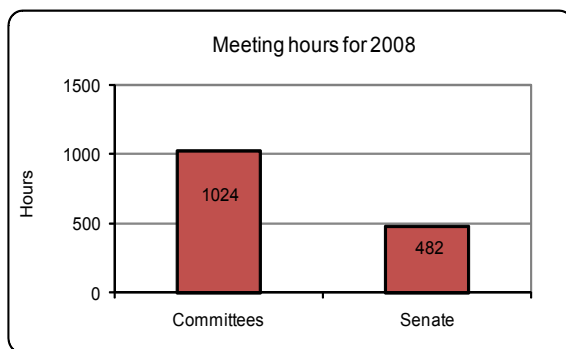


Senate Committees

The role of committees is to investigate and to draw attention to what they find. They throw ‘light in dark corners’ and give advice.

Like many deliberative assemblies, the Senate finds it useful to delegate responsibility for certain tasks to small groups. The Senate may refer a particular matter to a committee because the matter warrants detailed examination, because the Senate wants information to be collected, or because it wants to hear views on the matter. These tasks are more easily undertaken by a small group of senators rather than by the Senate as a whole. Committees encourage and enable senators to develop special interests and expertise in particular aspects of public policy. They also provide an opportunity for organisations and individuals to make representations to Parliament and to have their views placed on the public record.



Sources: *Work of Committees 2008* and *Business of the Senate 2008*

Participation in committees has become a very important aspect of the work of senators. More time is spent by senators attending committee meetings and hearings than in attending sittings of the Senate. The chart compares the total meeting hours of Senate committees with the total hours of meetings of the Senate in 2008.

Senators serve on about 30 parliamentary committees. These can be classified into several categories according to their purpose or method of operation.

Select committees

A select committee is created as required to inquire into and report upon a particular matter. It may be established at any time by a resolution of the Senate which will specify the committee's composition, terms of reference and powers. A select committee has a limited life and ceases to exist when the time allocated for it to do its work expires and it presents its final report.

Select committees often inquire into controversial or politically sensitive matters. Examples of matters examined by select committees in recent times include the Lucas Heights reactor contract, uranium mining and milling, the new tax system, Medicare, ministerial discretion in migration matters, the administration of Indigenous affairs, mental health and climate policy.

Where a particular policy area is considered to merit continuous review, a select committee may have an extended life. A notable example is the Senate Select Committee on Superannuation, which was first appointed in 1991. The longest running select committee in the history of the Senate, the committee was reappointed successively, with slight name changes but with the same functions and powers, over a 12-year period. Before ceasing operation on 10 September 2003 when its final report was tabled, the 'Super' select committee tabled 58 reports and background papers on a range of superannuation and related matters.

Standing committees

Standing committees are appointed at the beginning of each Parliament under Senate standing orders 17 to 25 (refer to <http://www.aph.gov.au/Senate/pubs/>

standing_orders/index.htm for standing orders). They continue to function until the end of the day before the commencement of the next Parliament. Senate standing committees, covering every area of government operations, have developed a reputation as the backbone of the Senate's committee work.

Standing committees permit a continuing surveillance of defined fields of government activity, call upon scholarly research and advice and create an awareness of the Senate's 'watchdog' function. There are a number of different kinds of standing committees: domestic, legislative scrutiny, legislative and general purpose, and joint.

Domestic committees

There are eight domestic committees dealing with matters relating to the internal operations of the Senate including publications, appropriations and staffing, procedure, library services, the provision of other facilities in Parliament House and senators' interests. The Committee of Privileges, which inquires into matters relating to the power and immunities of the Senate (for example, the protection of witnesses before Senate committees) is regarded as one of this group.

The Selection of Bills Committee is also classified as a domestic committee. The committee comprises the Government Whip (and two government senators), the Opposition Whip (and two opposition senators) and the whips of any minority parties. It recommends to the Senate which bills should be referred to a committee for detailed inquiry and public consultation, to which committee, and at what stage of their passage they should be referred, and the date by which the committee should present its report. This is the most common method by which bills are referred to committees. The Selection of Bills Committee meets weekly when the Senate is sitting.

By referring bills to the appropriate committees, several bills can be considered in detail simultaneously, thus allowing more time to debate the major issues of the day in the principal forum, the Senate chamber.

Legislative scrutiny committees

All bills and subordinate legislative instruments that come before Parliament are scrutinised by either the Scrutiny of Bills Committee or the Regulations and Ordinances Committee to ensure that they conform

to certain principles mainly concerned with civil liberties.

Scrutiny of Bills Committee

The Scrutiny of Bills Committee examines proposed laws before they are debated by the Senate. This committee assesses bills against personal rights and liberties criteria similar to those used by the Regulations and Ordinances Committee (see below). It also scrutinises proposed legislation to ensure that it does not inappropriately delegate powers to make regulations, and that any such regulations will be subject to adequate parliamentary scrutiny.

The committee does not usually recommend specific changes to bills. It simply highlights those provisions which may offend its criteria—leaving it to senators to propose any changes in the chamber. To fit in with the Senate's legislative timetable the committee works quickly: it aims to have the whole scrutiny and reporting process completed within two sitting weeks of a bill being introduced. The findings of the committee are published in the *Alert Digest* and in Scrutiny of Bills reports which are available on the committee's homepage.

Standing Committee on Regulations and Ordinances

Many of the matters on which Parliament makes laws are extremely complex and it is neither possible nor desirable to include all the details in an Act of Parliament. Many Acts therefore contain a provision that delegates to the government the power to draw up legislative instruments covering detailed or technical matters required for the purpose of the Act. An Act will usually have a power authorising the Governor-General to make regulations. For example, the Health Insurance Act under which the Medicare scheme operates, establishes broad principles and sets out the way the scheme is to be administered, but many of the fine details, including the scheduled fees for various medical procedures, are prescribed by regulation. An Act may also authorise a minister to make other forms of legislative instruments such as determinations, orders, guidelines, standards and airworthiness directives.

A legislative instrument carries the full force of the law—it has the same effect as an Act of Parliament. The power to make legislative instruments is therefore an important one which needs to be monitored closely to ensure that it is not abused. For this reason the

Legislative Instruments Act 2003 requires that all legislative instruments be tabled in both houses of Parliament and gives either house the right to disallow (that is, veto) a large number of them.

The Regulations and Ordinances Committee, with the assistance of an independent legal adviser, meets every week that the Senate sits to check all disallowable legislative instruments tabled in the Senate (around 2000 per year, but the number is increasing). This is to ensure that each instrument is in accordance with the Act of Parliament under which it is made, that it does not trespass unduly on personal rights and liberties, that it makes appropriate provision for the review of administrative decisions and does not contain matter more appropriate for parliamentary enactment.

The committee works in a bipartisan manner and since its establishment in 1932 the Senate has not rejected a committee recommendation that a legislative instrument be disallowed. Its publications, the *Delegated Legislation Monitor*, the *Disallowance Alert* and the *Scrutiny of Legislative Instruments Alert*, are available on the committee's homepage.

Legislative and general purpose standing committees

Central to the Senate's committee system are the legislative and general purpose standing committees. These committees were first established in 1970 along with a dedicated stream of estimates committees, to examine legislation, government administration and references of a general nature. Since 1994 the estimates function has been subsumed by these standing committees.

From 1994 until 2006 the Senate committee system comprised a pair of standing committees—a references committee and a legislation committee—in each of eight subject areas. Each pair of committees had overlapping membership and a shared secretariat. From September 2006 the pair of committees was re-combined into one for each subject area. In May 2009 the Senate agreed to revert to the structure of paired committees—a references committee and a legislation committee—which had existed previously.



The Rural and Regional Affairs and Transport committee conducting a site visit during the inquiry into Climate Change and the Australian Agricultural Sector, 2008

The departments and agencies allocated to the eight legislation committees by order of the Senate are as follows:

Legislative and General Purpose Standing Committees	Departments and agencies
Community Affairs	Families, Housing, Community Services and Indigenous Affairs; Health and Ageing
Economics	Treasury; Innovation, Industry, Science and Research; Resources, Energy and Tourism
Education, Employment, and Workplace Relations	Education, Employment and Workplace Relations
Environment, Communications and the Arts	Environment, Water, Heritage and the Arts; Broadband, Communications and the Digital Economy
Finance and Public Administration	Finance and Deregulation; Human Services; Parliament; Prime Minister and Cabinet (including Climate Change)
Foreign Affairs, Defence and Trade	Defence (including Veterans' Affairs); Foreign Affairs and Trade;
Legal and Constitutional Affairs	Attorney-General; Immigration and Citizenship
Rural and Regional Affairs and Transport	Agriculture, Fisheries and Forestry; Infrastructure, Transport, Regional Development and Local Government

References Committees

References committees inquire into and report upon various general matters referred to them by the Senate. The scope of inquiries and their terms of reference may range from the very broad and comprehensive to the quite specific. Examination can require evaluation of policy areas and assessment of implementation within and across allocated portfolios. The Legal and Constitutional Affairs Committee, for example, has inquired into matters such as the potential for an Australian Republic, access to legal aid, progress towards Reconciliation, and electoral equality.

These types of general purpose inquiries have been a major component of committee activity since 1970. During recent years the value of Senate committee inquiries has been demonstrated by the demands placed on committees to conduct several short inquiries simultaneously.

Since 1982, it has been the practice to forward petitions presented to the Senate to standing committees for consideration. If a committee wishes to pursue an issue raised in a petition, it must seek the reference of the matter by the Senate.

Legislation Committees

Legislation committees have a number of functions:

1. Consideration of proposed government expenditure

Legislation committees inquire into and report upon the government's budget proposals (estimates of expenditures) referred to them by the Senate. These estimates are contained in the main appropriation bills introduced into Parliament as part of the Budget in May (budget estimates), and in the additional appropriation bills introduced in November (additional estimates).

Public hearings are held at which the relevant Senate ministers, together with senior officials from the organisations whose estimates are being examined, appear before the committees to explain expenditure proposals and to answer questions concerning the effectiveness and efficiency of various programs. An observer from the Department of Finance and Deregulation also attends each committee hearing.

The committees work to a very tight timetable. Each committee is allocated four days to conduct hearings during Budget estimates and two days or more to



The Finance and Public Administration Committee during estimates hearings, 2008

consider additional estimates. When information is not provided during a hearing, the committee sets a date by which that information is required.

Supplementary hearings may be held after consideration of budget estimates. Senators must give three days' notice of any matter relating to the proposed expenditure they wish to discuss at the supplementary hearings.

Once committees have completed their consideration of the estimates expenditure they report their deliberations to the Senate.

Consideration of estimates is regarded by senators as among the most valuable of the Senate's activities. The former Leader of the Opposition in the Senate, the Hon. Senator John Faulkner, described the process as the 'best accountability mechanism of any Australian parliament.' (Senate Hansard, 13 May 2004, p. 23209).

For more information on the consideration of estimates see Senate Brief No. 5, *Consideration of Estimates by Senate Committees*.

2. Consideration of legislation

Committees also inquire into and report on any bills or draft bills referred to them.

Until 1990 the Senate referred bills to committees on an ad hoc basis. New procedures adopted in 1989 and commenced in 1990 saw the establishment of a systemic referral of bills to legislative and general purpose standing committees by the Selection of Bills Committee (see Domestic committees above). Since then, there has been a substantial increase in the number of bills referred to standing committees. In the years 1970 to 1989 the Senate referred 55 bills to committees for consideration. Between 1990 and 2008, 1292 bills were referred to committees.

Some bills may require consideration only from a technical point of view while others may need to be examined in terms of their substance and impact. Committees endeavour to seek evidence from a wide range of witnesses in the time available, both by receiving written submissions and by oral evidence. The committees meet in public to hear evidence from the appropriate minister and officials, and usually a number of independent experts or representatives of organisations affected by the bill. Often these hearings

are held at various locations around Australia relevant to the subject matter of the bill.

The practice of routinely referring bills to committees has given Senate committees a greater role in the consideration of legislation. A committee has no power to amend a bill referred to it, but it may recommend amendments or it may advise the Senate to agree to the bill without changes.

3. Consideration of annual reports and examination of government administration

Standing order 25 (20) orders committees to monitor the performance of government departments and agencies allocated to them, by examining their annual reports.

The committees are required to report to the Senate on whether the annual reports are satisfactory, to investigate any matters requiring closer scrutiny, and to monitor whether annual reports are received on time. Committees also report to the Senate if an agency fails to present its annual report. Annual reports of departments and agencies may also be considered by committees in conjunction with their examination of estimates.

Committees may also report on the performance of departments and agencies allocated to them.

Joint committees

A joint committee is one on which both senators and members of the House of Representatives serve. Joint committees are established where it is considered that matters should be the subject of simultaneous inquiry by both houses.

Joint committees may be statutory, select or standing committees. Joint statutory committees are established by statute (an Act of Parliament). Joint select or standing committees are established under the standing orders of each house. The powers and proceedings of joint committees are determined by resolution of both houses.

There are currently seven joint statutory committees which focus on:

- Australian Commission for Law Enforcement Integrity
- Australian Crime Commission
- Broadcasting of Parliamentary Proceedings

- Corporations and Financial Services
- Intelligence and Security
- Public Accounts and Audit
- Public Works

There are six joint standing committees responsible for:

- Electoral Matters
- Foreign Affairs, Defence and Trade
- Migration
- National Capital and External Territories
- Parliamentary Library
- Treaties

At present there are no joint select committees. In past years joint select committees have investigated a variety of matters including intelligence services, the retailing sector, the republic referendum and family law.

Establishment and membership of Senate committees

The Senate's standing orders specify the membership of standing committees and the number of positions to be allocated to senators from the government, opposition, minority parties and independents.

Legislative and general purpose standing committees consist of six senators—three government members, two opposition members and one member from the minority groups and independent senators. Government senators chair the eight legislation committees and opposition and minority party or independent senators are elected as deputy chairs. Opposition or minority party senators chair the eight references committees and government senators are elected as deputy chairs.

The chair of a committee—or deputy chair when acting as chair—has a casting vote if the vote is tied.

Senators who are interested in the work of a particular committee but are not members of it may be appointed by the Senate as participating members which gives them all the rights of membership except the right to vote on matters before the committee under standing order 25(7). Senators may also be appointed to committees as substitute members, to replace an existing member for a specified time, for a particular inquiry or for the consideration of certain issues. Unlike participating members, substitute members

have voting rights in respect of those matters for which they are substitute members.

Standing orders provide that when committees are considering estimates any senator may attend hearings, ask questions of witnesses and contribute to deliberations, contribute to the committee's report, but they may not move motions (standing order 26(8)) or vote.

The membership of select committees is specified in the resolution establishing them. They have varied between five and nine members and the chairmanship of the committees may be held by senators from any of the political parties. The size of statutory committees is specified in the legislation which authorises their establishment. Joint committees, because they consist of members of both houses of Parliament, are larger, ranging in size from ten to 30 members.

When positions on a committee need to be filled, the political parties arrange for an appropriate number of their senators to be nominated (through the party whips). The non-government nominees are usually determined by agreement between the opposition, minor parties and independent senators. The nominations are then proposed to the Senate, which formally appoints those senators named in the motion. A senator wishing to resign from a committee must similarly seek the formal permission of the Senate to be discharged from attendance on the committee.

Legislative and general purpose standing committees may appoint subcommittees consisting of three or more of its members and refer to any such subcommittee matters which the committee is empowered to consider. Subcommittees usually have the same powers as their parent committees but may not, however, report directly to the Senate; their task is to report their findings back to their parent committee. The Appropriations and Staffing Committee and the Scrutiny of Bills Committee are also authorised to appoint subcommittees to assist them in carrying out their business. Subcommittees increase the flexibility of committees and enable them to pursue several tasks simultaneously.

Powers of committees

The direction and extent of a Senate committee's inquiry is determined by its terms of reference. Committees do not have powers of their own: they possess only the authority delegated to them by the Senate itself.

The Senate has the power to take evidence under oath. It can also require that people attend, and that documents be produced. These powers support one of the Senate's major functions: to inquire into any matters of concern as a necessary preliminary to debating and legislating about those matters. The Senate delegates the inquiry function, together with the necessary powers, to committees. As a result of this delegation of power, committee powers are extensive. Committees may 'send for persons and documents' which means that they may summon witnesses and require them to produce documents.

However, committees' powers of compulsion are rarely used. Committees usually invite witnesses to make oral and written submissions and to provide documents. Witnesses usually welcome the opportunity to appear at a committee hearing, as the hearings provide a forum in which individuals and groups may put their view directly to the Parliament.

Committees may move from place to place and meet in public or private session. Senate committees may also meet and conduct business during the prorogation of Parliament or when the House of Representatives has been dissolved for the purposes of a general election. As discussed earlier, committees also have the power to appoint subcommittees to enable them to transact additional business.

The inquiry process

The senators serving on a committee are assisted by a small secretariat consisting of a secretary and research and clerical staff. The secretary is a committee's principal adviser on committee procedures and manages all aspects of the committee's research and operations. The secretary works closely with, and at the direction of, the chair of the committee. On behalf of committee members, the secretariat staff arranges hearings, prepares questions to be asked of witnesses if required, analyses and summarises submissions and evidence, conducts research, prepares draft reports and monitors government and other responses to reports.

Committee inquiries are usually advertised in the national press, reaching the people and organisations most likely to make submissions. The committee conducting the inquiry will also seek submissions from government and non-government agencies known to have an interest in the matter under inquiry. Persons or organisations with a specialist knowledge or interest may be specifically invited to make submissions.

Committees analyse the material submitted to them, sometimes with the assistance of expert advisers. Some witnesses who have made submissions are invited to attend public hearings so that submission material can be further investigated and tested.

As well as hearing evidence in Canberra, committees frequently travel to other cities and regional areas to listen to witnesses. In this way, they are able to obtain first-hand experience of the issues under consideration. Committees may also arrange informal briefings, seminars, and site inspections to augment their formal evidence-gathering.

Committees generally prefer to take evidence in public hearings. Where there is a risk, however, that the exposure of some evidence in a particular committee inquiry could be contrary to the public interest for reasons including possible prejudice to court proceedings, national security or individual privacy, a committee may decide to hear evidence in private (*in camera*).

Senate standing order 35(2) requires that the examination of all witnesses, including those heard *in camera*, be recorded in a transcript of evidence (*Hansard*). Witnesses may apply at any time for all or part of their evidence to be heard in private and the committee must consider such applications. Although the Senate and its committees have the power to publish evidence taken *in camera*, normally this course is not taken. However, the Senate or a committee may subsequently decide to publish *in camera* evidence because the reasons for keeping such evidence confidential no longer exist. It is an offence punishable by the Senate to publish evidence taken *in camera* without permission.

Witnesses may also request to be accompanied by and consult a lawyer during their appearance before a committee. Such requests are rare. If permission is given for a lawyer to attend a committee hearing, the lawyer is not permitted to represent the witness by giving the witness' submission or giving oral evidence on behalf of the witness. The lawyer cannot examine or cross-examine any witness, or intervene during the committee's examination of any witness. A witness accompanied by a lawyer must be given reasonable opportunity to consult with the lawyer during the hearing.

Public servants appearing as witnesses before committees have the same rights and responsibilities

as other witnesses. Government guidelines for public servants appearing as witnesses before committees state that public servants are required to fulfil their accountability obligations by providing full and accurate information to the Parliament (and its committees) about the factual and technical background to policies and their administration. Further, privilege resolutions of the Senate provide certain rights for witnesses. Privilege Resolution 1(16) provides that Commonwealth or state public servants are not to be asked to give opinions on matter of policy and must be given reasonable opportunity to refer questions to a superior office or to a minister.

Committees and parliamentary privilege

The proceedings of committees are recognised as proceedings of Parliament and attract the same privileges and immunities as Parliament itself. This means that witnesses receive very wide protection and immunity enabling them to give evidence freely and honestly without fear of recrimination. Parliamentary privilege also means that witnesses cannot be sued or prosecuted for what they say in evidence to a committee.

The *Parliamentary Privileges Act 1987* defines as an offence any 'improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member's duties as a member.' Examples of offences under this Act include interference with the authority of the Senate or a committee, and refusing to give (or prevent others from giving) evidence to a committee.

Matters of privilege, usually relating to alleged interference with senators or committees, are considered by the Committee of Privileges. The committee may call and examine witnesses and report to the Senate on whether in its opinion any of the Senate's rights have been transgressed. The Parliamentary Privileges Act authorises the Senate to impose a penalty of imprisonment for a period up to six months or a fine of up to \$5,000 (for individuals) or \$25,000 (for corporations) if it considers that an offence has been committed.

The Parliamentary Privileges Act also provides that papers and documents presented to, and published by, a committee attract absolute privilege because they are proceedings in the transaction of parliamentary

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business. All documents received by a committee during an inquiry are presented to the Senate and remain in the custody of the Senate after the committee has conducted its inquiry.

Reporting and follow-up

Senate standing order 38(1) requires the chair of a committee to prepare a draft report and submit it to the committee for consideration. In practice, the chair gives drafting instructions to the secretary who prepares a draft with secretariat assistance. After a final report has been agreed to, committee members may add a minority or dissenting report or attach relevant conclusions and recommendations. While committees usually attempt to reach consensus, dissenting reports are not uncommon.

The process of reporting is completed when a copy of the report, signed by the chair, is formally presented to the Senate. Until that time the report is under embargo and its contents may not be revealed. Debate may take place after the report has been tabled, and at other times specifically programmed by the Senate. Committee reports may also be presented to the President of the Senate or his deputy when the Senate is not sitting. The report is then deemed to have been presented to the Senate and publication is authorised.

For reports on matters on which the Senate has power to act, the presentation of a report may be followed by a motion that it be adopted or agreed to. Reports from select and legislative and general purpose standing committees, however, frequently recommend changes to policies, legislation and administrative practices—matters which cannot be carried by the Senate acting alone. The usual practice with such reports, therefore, is for a senator to move that the report be noted. This motion enables further debate to occur.

The Senate orders substantial committee reports to be printed, and they are incorporated in the Parliamentary Papers Series. Copies of all reports are available to the public through the web page at http://www.aph.gov.au/Senate/committee/completed_inquiries/index.htm.

Governments give careful consideration to reports and frequently act on committee recommendations. Since 1978, successive governments have undertaken to respond to committee reports within a specified period—currently three months. In 1994 the Senate passed a resolution that the government response should also address any minority or dissenting report and any matter added to the report by a member or participating member of the committee. Since 1981 the President has tabled a six-monthly report which



Senate Select Committee on Regional and Remote Indigenous Communities, Balgo, WA, 2008
Department of the Senate

monitors whether government responses have been provided to committee reports or not. The government also tables a similar report every six months.

The value of the committee system

The Senate's comprehensive committee system has significantly strengthened the Australian parliamentary system of government. It assists the Senate to perform its law-making and inquiry role more effectively and to keep the government accountable for its actions. Committees also provide a formal channel of communication between Parliament and the public and this encourages greater community participation in the parliamentary process. Travelling to stakeholders in town and country, committees hear local views on government policy. Media attention is drawn to matters that might otherwise have been overlooked.

The importance of the committee system is exemplified by the increasing volume of work carried out by Senate committees. In the twenty years from 1970 to 1990, Senate committees tabled an average of 32 reports annually. In the years 1999 to 2005, the number increased almost fourfold, to an average of 111 reports a year. This trend makes it clear that senators regard the committee inquiry and estimates processes as an invaluable aid to their work.

A comprehensive list of all inquiries can be found in the Register of Senate Committee Reports.

Enhancing the capacity of Parliament and the community to scrutinise the legislative process, and to monitor the performance of executive government, the committee system emerges as the accountability powerhouse of the Senate.

Further reading

A number of brochures for the guidance of witnesses at Senate Committee inquiries are available on the internet at http://www.aph.gov.au/Senate/committee/wit_sub/index.htm

‘Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters; November 1989’, *Commonwealth Parliamentary Debates* (Senate), 30 November 1989, pp. 3693-3702. Extract also available from the Senate Committee Office and at www.aph.gov.au/senate/committee/wit_sub/index.htm

Harry Evans (ed.), *Odgers’ Australian Senate Practice*, 12th edn, Canberra, Department of the Senate, 2008. Accessible at <http://www.aph.gov.au/senate/pubs/odgers/index.htm>

‘Reference of Bills to Australian Senate Committees – With particular reference to the role of the Selection of Bills Committee’, *Papers on Parliament* No. 43, Department of the Senate, Canberra, June 2005.

Senate Legislative and General Purpose Standing Committees: the First 20 Years 1970–1990. Department of the Senate, Canberra, 1991.

Senate Procedure Committee, *First Report of 1994, First Report August 2006 and Second Report April 2009*, Department of the Senate, Canberra. All reports accessible at http://www.aph.gov.au/Senate/committee/proc_ctte/reports/index.htm

The *Parliamentary Privileges Act 1987* and the *Senate Privilege Resolutions* appear as appendices to the 125th Report of the Senate Committee of Privileges, which can be accessed at http://www.aph.gov.au/Senate/committee/priv_ctte/completed_inquiries/2004-07/report_125/index.htm. This report also describes the Committee’s work.

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