



THE SENATE
PROCEDURE COMMITTEE
THIRD REPORT OF 1993



PRESENTATION OF PETITIONS BY LEAVE

SUBSTITUTE MEMBERS ON COMMITTEES

NOTICE OF MATTERS TO BE RAISED AT
SUPPLEMENTARY HEARINGS OF ESTIMATES COMMITTEES

15 December 1993

MEMBERS OF THE COMMITTEE

President of the Senate
Senator the Hon Kerry W Sibraa, Chairman

Deputy President and Chairman of Committees
Senator N A Crichton-Browne

Leader of the Government in the Senate
Senator the Hon G J Evans, QC

Leader of the Opposition in the Senate
Senator R Hill

Senator V W Bourne

Senator J Coates

Senator the Hon J P Faulkner

Senator the Hon R F Ray

Senator M E Reid

Senator B C Teague

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The Procedure Committee reports to the Senate on the following matters referred to the Committee by the Senate or Mr President.

PRESENTATION OF PETITIONS BY LEAVE

On 31 August 1993 Senator Ray suggested that the Procedure Committee should look at the question of the presentation by leave of petitions which are not in conformity with the standing orders. Senator Ray pointed out that petitions presented by leave have an advantage over those which are correctly framed, in that they are not included in the summary of petitions read out by the Clerk, but are, in effect, given a special prominence.

Standing order 69(1) provides that, in order to be presented in the normal way, a petition must be certified by the Clerk that it is in conformity with the standing orders. Petitions which are not so certified are often presented by leave.

The principal rules contained in standing orders 70 and 71 relating to the form and content of petitions are:

- they must contain a request for action by the Senate or the Parliament
- signatures must be written on a page bearing the text of the petition
- there must be no interlineations or erasures
- documents must not be attached to petitions
- they must be decorous and temperate in language and not contain any attacks on any legislature.

These rules are designed to preserve the integrity of the petitioning process, and, in particular, to ensure that documents which are not petitions are not presented in the guise of petitions, and that matter is not added to a petition after it is signed.

The Committee is advised that is the practice of the Clerk to certify a petition to be in conformity with the standing orders if this can possibly be done, and to withhold certification only if a petition is clearly and seriously contrary to the standing orders. Petitions which are not certified, and which are therefore often presented by leave, always have some obvious defect, such as:

- they are not petitions, but are, for example, letters expressing opinions about public affairs
- they are addressed to some other body, such as a state parliament or a minister
- they do not, on any possible construction, ask for any action by the Senate or the Parliament
- signatures are attached on loose sheets of paper without the text of the petition, so that there is no evidence that the signatories actually signed the petition.

In effect documents which are not petitions are being presented at the time for the presentation of petitions.

The Committee considers that the rules applying to petitions are appropriate and should not be changed. Nor should the rules be more loosely interpreted so as to accept such documents as petitions.

While it is a matter for the judgment of Senators whether to allow the presentation of any document by leave at any time, the Committee believes that documents which do not qualify as petitions should not be presented by leave at the time for petitions except in exceptional circumstances and for compelling reasons, established to the satisfaction of all Senators by the Senator proposing to present the document.

SUBSTITUTE MEMBERS ON COMMITTEES

During debate on a motion by Senator Childs to refer a matter to the Privileges Committee on 18 November 1993, Senators Macdonald and Panizza asked that the Procedure Committee consider advice which was given to the Standing Committee on Industry, Science, Technology, Transport, Communications and Infrastructure relating to the participation in committee deliberations of substitute members, that

is, members who are appointed to committees to replace other members for the purposes only of particular inquiries.

The essence of the advice given to the standing committee is that substitute members should act as members of a committee only in respect of matters which are wholly part of the inquiry for which the substitute members are appointed, and in respect of all other matters decisions should be taken by the permanent members of the committee.

In the case in question, Senators Macdonald and Panizza were appointed on 18 May 1993 to replace Senators Archer and Ferguson *"for the consideration of the committee's inquiry into major disasters and large-scale emergencies"*. The substitution of Senators Macdonald and Panizza for Senators Archer and Ferguson therefore had effect only for the consideration of the inquiry, and, on the stated principle, not for the consideration of any matter which was not wholly part of the inquiry.

The standing committee was also advised that, although the matter of privilege arose out of the particular inquiry, it was not a matter which was wholly part of the inquiry, but related to the general operations of the Committee, governed by paragraph (18) of Privilege Resolution No 1. Therefore a decision in relation to it should be taken by the permanent membership of the Committee.

The standing committee was advised that it would be open to the committee to consult with Senators Macdonald and Panizza for the purposes of its deliberations on the privilege matter, but on the stated principle they would not be able to participate in the decision-making, for example by voting.

The Procedure Committee considers that this advice is correct. It is appropriate that the stated principle which is the basis of the advice be adhered to, because otherwise a great deal of uncertainty could be introduced into committee proceedings, and it would be frequently unclear as to which members of committees could vote on particular matters. The Procedure Committee emphasises the element of the advice that *it is open to a committee to consult with substitute members on any matter regardless of whether they have the right to vote on that matter.*

The Committee also points out that only members of a committee may attach dissenting reports to a report. Substitute members may sign dissenting reports which relate exclusively to the matters for which the substitute members were

appointed, but a Senator who is not either a substitute member or a permanent member of a committee cannot sign a dissenting report.

NOTICE OF MATTERS TO BE RAISED AT SUPPLEMENTARY HEARINGS OF ESTIMATES COMMITTEES

On 18 November 1993, as a result of its consideration of the appropriation bills and the report of Estimate Committee F, the Senate adopted the following resolution:

that the Procedure Committee give consideration to paragraph (3) of the order of the Senate of 6 May 1993 with a view to recommending an amendment to the order which would allow notices of matters to be lodged with estimates committees at least three days before the first day of the supplementary meeting in relation to the portfolio in question.

The Procedure Committee considers that the Senate should not adopt this suggestion of Estimate Committee F. The current procedures, whereby notice of matters to be raised at supplementary hearings of estimates committees must be lodged at least three days before the day fixed for commencement of supplementary hearings, allows a minimum of seven days for members to lodge notices after the day fixed for the receipt of written answers and additional information. The setting of a particular day for lodging the notices has the virtue of clarity and simplicity, which would be lost if there were different deadlines for submitting notices in relation to different departments. This would also make the task of the estimates committees in scheduling their supplementary hearings more difficult, because it is not known how much time should be devoted to the supplementary hearings on particular departments until all the notices of matters to be raised at the supplementary hearings are lodged.

The Procedure Committee therefore recommends that the provisions of the relevant resolution of the Senate of 6 May 1993 not be changed in this respect.

Kerry W Sibraa
Chairman