

DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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19 August 2005

THE “NEW SENATE”

The senators whose terms began on 1 July 2005 were sworn in on 9 August, with the exception of Senator Vanstone, who appeared and was sworn in later. The resignation of Senator Mackay was announced on 9 August. This does not affect the majority of one of the government parties, as vacancies are always paired by the parties.

The election of the President and Deputy President on 9 August saw the convention maintained that the Deputy President should come from the Opposition party. The Greens nominated candidates for both positions, necessitating a secret ballot, but the government and Opposition parties apparently voted for each others' candidates in accordance with the convention.

ALLOCATION OF QUESTIONS

No sooner had this matter been amicably determined, however, than a dispute broke out about the allocation of questions. The calling of senators to ask questions has in the past been in accordance with an agreed order and quotas determined by the parties and notified to the President. Before the first sitting, the President circulated a revised order which was then applied. In the course of an extensive debate it was pointed out that this order was the same as that proposed by the Leader of the Government in the Senate, and that there had been no consultation with other parties. The President was accused of carrying out the government's wishes, but invited consultation between the parties in his statement. Presumably it will be announced if the order is adjusted as a result of those consultations.

LEGISLATION

There was a “tidying up” of legislation left over from the “old Senate” on 10 August. Senate amendments were not insisted on to the Tax Laws Amendment (Personal Income Tax Reduction) Bill 2005, to implement the government's tax cuts which had already taken effect under a statutory instrument (see Bulletin No. 192, pp 4-5). Amendments to the Border

Protection Legislation Amendment (Deterrence of Illegal Foreign Fishing) Bill 2005 were also not insisted on, and the Superannuation Laws Amendment (Abolition of Surcharge) Bill 2005, which had been rejected, was revived and passed (for the Revival of bills, see *Odgers'* 11th ed, pp 261-2).

It will be interesting to see whether any amendments not wholly initiated by government are accepted in the future. In the past the government has accepted or adopted amendments not its own, for example, arising from committee reports.

REFERRAL OF BILLS TO COMMITTEES

The first Selection of Bills Committee report of the sittings, also on 10 August, had the result of referring some bills to committees, so that system is still working.

ORDERS FOR DOCUMENTS

Five motions for the production of documents were rejected by the government on 17 August. A ministerial statement offered various grounds for refusing to produce the documents: the “longstanding convention” that legal advice to government is not produced (this cannot be true because of the many occasions on which advices have been voluntarily produced by government); cabinet documents (this ground is supposed to be confined to disclosing the deliberations of cabinet, not every document having a connection to cabinet); and the document concerned was “not intended for public disclosure” (if a document *is* intended for public disclosure, presumably it would be disclosed and then there would be no point in calling for it). It seems to be the view of the government that “requests” for documents should be made directly to ministers’ offices, but, even if such requests are met, this has the disadvantage that the documents are not tabled in the Senate and their publication thereby given the status of proceedings in Parliament. It was suggested in debate that the government intends to refuse any and all documents in the future, but it was stated that it intends to separately consider motions for documents.

The Palmer report on the detention of Ms Cornelia Rau was recorded on 10 August as being tabled in response to a Senate order, but it was obvious that the government would have to publish the report in any event. It was extensively debated, as was the Audit Office report on the detention centre contract. Both reports were highly critical of the immigration detention system. There were also other debates on that subject.

GOVERNMENT ADVERTISING

Senator Murray moved on 17 August an amendment to a bill which would have required the publication, in relation to the expenditure of any money under the bill on government advertising campaigns, of the same information required by the Senate’s order of 29 October

2003. The government refused to comply with that order, but subsequently answered, after various delays, estimates questions on notice along the same lines. Senator Murray clearly intends to conduct his own campaign about disclosure of government advertising, presumably partly by moving this amendment to other bills. The amendment was rejected by the government.

COMMITTEE REPORTS

Among the significant manifestations of committee activity during the period was the report by the Foreign Affairs, Defence and Trade References Committee on the duties of Australian personnel in Iraq, which was presented on 18 August, which referred to the question of what Australian personnel knew about prisoner abuse in Iraq, and which was notably unanimous.

UNUSUAL MOTION

An unusual motion was moved on 11 August on the subject of global warming. It would have required the Minister for the Environment and Heritage to explain submissions made on behalf of the government to the Federal Court in a case involving the construction of thermal power stations. It was alleged in debate that the submissions to the court denied that global warming exists or that the burning of coal contributes to global warming, contrary to a recent ministerial statement which affirms both of those points. The motion was rejected by the government.

UNSEEMLY CONDUCT

A great deal of time was spent on debating the actions of Senator McGauran, the National Party Whip in the Senate, in making a gesture following a division in the Senate on 11 August. The President, called upon to rule on the matter, declared that the action was unseemly. Senator McGauran expressed regret. A motion of dissent from the President's ruling, interpreting it as meaning that Senator McGauran's action was not unparliamentary, was moved, extensively debated and not finally negatived until 18 August. Senator Brown raised the matter as one of privilege, but the President determined that a motion on the matter could not have precedence, on the basis that Senator McGauran's action was not capable of constituting a contempt under the Parliamentary Privileges Act, and therefore did not meet the criteria he is required to consider in making his determinations.

ODGERS' 11TH EDITION SUPPLEMENT

The Supplement to the 11th edition of Odgers has been produced in printed and electronic forms, and was tabled on 10 August. The Supplement updates the work to 30 June 2005.

ACCOUNTABILITY REPORT

It appears that there will be fewer, if any, orders for production of documents passed, and as governments in the past have often complied with orders even after opposing them on their passage, less information will therefore be available to the Senate as a result.

SENATE DAILY SUMMARY

The *Senate Daily Summary* provides more detailed information on Senate proceedings, including progress of legislation, committee reports and other documents tabled and major actions by the Senate. Like this bulletin, *Senate Daily Summary* may be reached through the Senate home page at www.aph.gov.au/senate

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