

DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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**for the sitting period 12—14 February 2008
and estimates hearings 18—22 February 2008**

25 February 2008

SENATE SITTINGS

“NEW” AND “OLD” SENATES

The Parliament was opened with the “old” Senate, with the composition determined by the 2004 general election still in place, which means that the Opposition will have a majority in its own right until the state Senate places turn over on 1 July. This situation is the result of an example of the unwisdom of amending the Constitution to take account of ephemeral political developments. Under the 1901 Constitution, the fixed terms of the senators began on 1 January, on the basis that general elections were likely to be held in the second half of a year. In 1906 it was decided that it would be better to have elections in the first half of the year, so a referendum was held to change the commencement of the Senate terms to 1 July. Prime ministers, however, possessing the power to dissolve the House of Representatives at any time, have, with some exceptions, gone back to holding elections in the second half of the year, which results in a six month gap before senators-elect take their seats.

The opening as such was also conducted in accordance with the old ceremony (leaving aside the Welcome to Country event before the opening), in spite of movements to change it over many years. With the change of government it is likely that some alteration of the opening procedures will be made in this Parliament.

COMMITTEES AND THE ELECTION

Senate committees met, held public hearings and presented reports after the prorogation and after polling day, thereby again demonstrating their continuity over an election period.

The committees had to be reappointed quickly in the first week of sittings because of the estimates hearings in the following week.

Standing order 25 was amended and the allocation of departments and agencies to committees was renewed to reflect the new administrative arrangements of the government. This was also necessary for the purpose of the estimates hearings.

Two committees revived previous references by way of report to the Senate after the committees were reappointed.

The reference of the additional estimates to the committees for the additional estimates hearings was made on the second sitting day, after the tabling of the associated documents.

The President's report on outstanding government responses to Senate committee reports was presented on 12 February, revealing the usual dismal picture of most responses not made on time, if at all. It will be interesting to see if the new government improves on this record.

“SORRY” MOTION

The new government declared that a motion for an apology to the “stolen generations” would be the first parliamentary business. This provided the second occasion for the Senate to pass a “sorry” motion. The Senate had already done so in 1997 when the “stolen generations” report was presented. That motion was passed by the then non-government parties by way of an amendment to a motion to take note of the report.

Unusual procedures were adopted for the second “sorry” motion. Special orders were passed for the motion to be put after only the various party leaders had spoken, and then for debate to continue on a motion to take note of the resolution, to allow other senators to speak.

Senator Bob Brown gave notice of an amendment to the government's motion, to refer to compensation. A senator is not required to give notice of an amendment, but there is nothing to prevent such a notice being given, and it is entered on the Notice Paper with the motion to which it refers.

WORKPLACE RELATIONS BILL

The new government also attached high priority to its workplace relations legislation to bring to an end the previous government's WorkChoices legislation.

The Selection of Bills Committee could not agree on a referral of the bill to a committee, and its report on the third day did not recommend a referral, but was the subject of a government amendment to refer the bill with a reporting date in the March sittings; this amendment was negated. The Opposition then used its majority to refer the legislation to a committee by way of a motion on notice with a reporting date in April. An amendment to that motion to substitute the government's proposed reporting date was also negated. Senator Bartlett successfully moved an amendment expressing the view that there should be more sitting days in the extended Easter adjournment to facilitate dealing with the bill. He was not able to move an amendment actually altering the sitting pattern, which had been set by resolution on the second day, because that would not have been a relevant amendment, even given the traditional generous interpretation of relevance. Nothing was subsequently done, however to alter the sitting pattern.

SELECT COMMITTEES

By Opposition motions on 13 February, three select committees were established with reporting dates before 1 July, on agriculture and related industries, state government financial management, and housing affordability. All three reflect issues pursued by the new Opposition, and all three venture significantly into areas of state responsibility, particularly the one on state government financial management. The committees have Opposition chairs and Opposition majorities through chairs' casting votes. By way of an amendment moved to the motions to establish the committees, the Opposition added provision for participating membership, similar to that for the legislative and general purpose standing committees, in respect of the committees on housing affordability and state government financial management, but not the agriculture committee. It will be interesting to see the measure of cooperation extended to the committees by state governments.

AUDIT REPORTS

Four significant reports of the Australian National Audit Office were presented:

- On the regional partnerships program: this report revealed even more problems with that program than had been detected by the Finance and Public Administration Committee report in October 2005, and provided vindication of that report.
- On the Centrelink access card: this report also exposed serious problems with this proposal, which the previous government had indefinitely postponed.
- On payments to the Australian Rail Track Corporation, which also revealed serious governance problems with that program.

- On the Senate order for the listing of government contracts: the Audit Office continues to police compliance with this order.

The report on the regional partnerships program was released shortly before polling day during the election, a matter which was discussed at the estimates hearings (see below).

APPROPRIATION BILLS

Two appropriation bills were passed to cover expenditure on the equine influenza outbreak, with a supposedly ordinary annual services bill, thereby adding ordinary annual horse flu outbreaks to ordinary annual tsunamis and other bizarre occurrences arising from the Finance Department's current interpretation of ordinary annual services (see *Odgers' Australian Senate Practice*, 11th ed., Supplement to p. 284 after paragraph 1). It is expected that this matter will be taken up by the Appropriations and Staffing Committee in the new Parliament. The Senate treated both bills as amendable bills.

PRIVATE SENATORS' BILLS

Senator Bartlett introduced on 13 February a bill to require parliamentary approval of overseas missions of the Defence Force. It is based on a bill first introduced by the Democrats in 1985, and was issued in draft for public consultation before introduction.

Many other private senators' bills, including some of parliamentary interest, from previous parliaments were restored to the Notice Paper.

PROCEDURAL ORDERS

Temporary procedural orders, relating to temporary substitutes on committees, the adjournment debate on Tuesdays, and divisions on Thursdays, were renewed on 13 February.

ODGERS' AUSTRALIAN SENATE PRACTICE

The Supplement to the 11th edition of *Odgers' Australian Senate Practice*, with updates to 31 December 2007, was issued in print and electronic form and tabled on 13 February.

ESTIMATES HEARINGS

Answers to questions on notice asked in previous estimates hearings continued to arrive after the prorogation and after the polling date, indicating that some departments accept the principle that they should continue to answer questions during an election. A few questions from the 2006 and 2007 hearings remained outstanding, and the final statistics on those answers were circulated to senators before the estimates hearings, perhaps stimulating some remarks which were made by senators about departments' tardiness in dealing with questions. Some departments presented outstanding answers just before the hearings.

The Leader of the Opposition in the Senate, Senator Minchin, addressed a letter to the Leader of the Government in the Senate, Senator Evans, asking for information about government appointments and other matters to be provided before the committee hearings. The information was not provided at that time, but the questions were also put on notice when the estimates process commenced with the referral of the estimates to the committees.

There was a high attendance and a high volume of questioning at the hearings, with three committees making use of the “spillover Friday”. At one hearing 22 senators attended.

PROCEDURAL MATTERS

Parliamentary secretaries. The propriety of parliamentary secretaries serving on committees was raised and was subject of a written advice, which was published by the committee concerned and is attached to this bulletin.

Advice to government. The Secretary of the Attorney-General's Department repeated an oft-made but oft-refuted claim about advice to government not being disclosed. This was also the subject of a written advice which was published, and is attached to this bulletin.

Constitution and quorums. During the hearing for the Senate Department, there was a discussion about the constitutionality of the Houses making rules restricting quorum calls. This arose from the arrangements in the House of Representatives which restrict quorum calls during the Friday sittings.

Audit office report. The Audit Office was subjected to criticism by members of the outgoing government for presenting its report on the regional partnerships program shortly before the polling date for the election. The Auditor-General, during the estimates hearing for the Audit Office, indicated that he had sought legal advice and had considered the legality and propriety of releasing the report during the election. As he indicated, he would have been subjected to even more criticism if he withheld the report until after the election. He tabled his legal advice, indicating that, as an officer of the Parliament, he could depart from the government practice of generally not disclosing legal advice. In spite of this evidence, one Coalition senator continued to refer to the “very convenient” release of the report, although an unprecedented attack on the Audit Office by the Nationals leader in the outgoing government had been withdrawn.

Department unforthcoming. At the hearing on 20 February the Department of Health and Ageing declined to provide some information about nursing homes because it is classified as “protected information” under the relevant statute. Such a statutory provision does not prevent giving information to a parliamentary committee, but the committee did not press the questions. On the following day, acting under another provision in the statute, the department authorised the release of the information, but did not inform the committee of this until the succeeding day when it had come to the committee’s attention and the department was asked about it. Committee members were not amused by this failure properly to inform the committee, and it was indicated that the subject would be pursued in the future.

Questions not answered. Cabinet deliberations and the content of policy advice were raised as reasons for not answering questions during the hearings, but the questions were not pressed and no serious problems arose from any refusals to answer questions.

Sub judice. The ongoing legal proceedings concerning the detention of Mr Mamdouh Habib was raised as a reason for reluctance to answer some questions about that case, but some further information was provided.

Questions on notice. Many questions were taken on notice, and there was some senatorial discontent with this on occasions. It may reflect the uncertainties created by the change of government.

Departmental secretaries. There was also some discontent about the failure of some departmental secretaries to attend the hearings. The attendance of departmental secretaries generally facilitates informative answers at the hearings.

MATTERS DISCUSSED

In the course of the hearings significant information was disclosed about government activities, including the following:

- The Chief of the Defence Force revealed that the cost of Australia's participation in the Iraq war was about \$2 billion, and expressed his belief that Australian personnel had completed their work in Iraq and should be withdrawn.
- Any attempt by the incoming government to cancel the previous government's agreement to purchase the Super Hornet aircraft could cost \$400 million, a figure which could rise in the future.
- The Australian Federal Police disclosed that only two control orders have been made under the anti-terrorism legislation, and that the unsuccessful pursuit of Dr Haneef cost \$7.5 million. Some more information was given about the "rendition" of Mamdouh Habib.
- The incoming government has frozen grants under the regional partnerships program in the light of the Audit Office report, except where contracts have actually been signed.
- The Future Fund has lost about \$700 million as a result of recent stock market fluctuations.
- Departments were questioned about action they had taken in relation to the new government's election promises.
- The incoming government has significantly reduced the numbers of ministerial staff.
- The new Minister for Immigration and Citizenship, Senator Evans, stated that he had too much power under existing legislation, and would seek to reduce ministerial involvement in immigration cases.
- Compensation settlements have been reached in relation to the Rau case and other cases arising from mistakes in immigration processes.
- The opportunity was taken to question the Treasury about the state of the economy, as has now become normal in estimates hearings.

- The Trent Smith case and the handling of it by the Department of Foreign Affairs and Trade was further explored.
- The pursuit by the Australian Competition and Consumer Commission of the petrol companies was further discussed.
- The Prime Minister's domestic expenditures were explored, continuing a tradition begun in the times of previous prime ministers.
- The 457 visa scheme was again the subject of revelations.
- The Queensland government's handling of the Patel extradition was the subject of critical questioning.
- The former prime minister's program to place chaplains in schools had not been taken up to a significant extent.
- The privately built royal coach, to which the previous government contributed \$250,000, nears completion.

ACCOUNTABILITY REPORT

In view of the changed situation in the Senate, the accountability report will again be integrated into the other matters considered in the bulletin.

RELATED RESOURCES

The *Dynamic Red* records proceedings in the Senate as they happen each day.

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, these documents may be reached through the Senate home page at www.aph.gov.au/senate

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