

DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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LEGISLATION: EQUALLY DIVIDED VOTES

A prominent feature of the period was the fate of government legislation being determined by equally divided votes in the Senate. This drew further attention to the situation of the government having to secure the support of all of the minor party and independent senators in order to form a majority; the loss of only one of those senators, when the Opposition parties vote against legislation, generally means that the legislation is lost, but the position is complicated in the circumstance of disagreements with the government over amendments.

The controversial bill to regulate donations to political parties, the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008, was negatived at the second reading by equally divided votes on 11 March, in spite of the government promising various amendments to overcome resistance. The support of Senator Fielding was not secured by the promised amendments.

The legislation to validate the tax imposed on “alcopops”, the tax having been collected for almost a year before the validating legislation was presented (see Bulletin no. 228, pp 2-3), suffered a similar fate but in more complicated circumstances. Amendments were passed on 16 March providing for the validation of only the tax collected so far (the amendments were in the form of requests because the bills were bills imposing taxation and therefore not amendable by the Senate), and an amendment to the motion for the second reading called on the government to adopt measures to alleviate the problem of binge drinking. The government rejected the requested amendments in the House of Representatives, but provided undertakings about such measures to be adopted. Again, Senator Fielding was not satisfied. The motion that the requests not be pressed by the Senate was the subject of equally divided votes on 18 March; the effect of this was that the amendments were lost, on the basis that, as they required a majority to be passed in the first instance, the lack of a majority to insist upon them meant that they no longer had majority support (see *Odgers’ Australian Senate Practice*,

12th ed., 2008, pp 258, 306, 307-8). Then the bills were rejected at the third reading (bills which are the subject of requests are not read a third time and thereby finally passed by the Senate until the requests are disposed of). This also resulted from equally divided votes in effect. At the first attempt the motion for the third reading was passed by one vote because an Opposition senator was accidentally absent. In accordance with the long-established principle that decisions of the Senate should not be taken by misadventure, the vote was taken again by leave, and on this occasion the question was negatived by one vote, because a government senator was accidentally absent. As taking the vote again would not have affected the result because the votes would have been equally divided and therefore the question negatived, the second vote was allowed to stand. An amendment was added to the motion for the adoption of the report of the committee of the whole indicating that, if the government presented a bill to validate the tax so far collected, the majority of the Senate would look favourably on such a bill. When this resolution was sent to the House by message, the government ignored it. As a result, the dilemma often anticipated but not previously realised in relation to this kind of tax, of the government having collected a large amount of tax illegally, has now arisen. It is not clear what the outcome of this situation will be. The option of a limited validating bill remains open to the government.

The major piece of legislation during the period was the government's Fair Work Bill, a huge document designed to reshape the workplace relations system. It was passed by the Senate in the early hours of 20 March with many amendments, mostly government amendments designed to secure support for the bill, including amendments arising from the inquiry by the Education, Employment and Workplace Relations Committee. The government rejected in the House a small number of amendments, mainly relating to the classification of small businesses. In the Senate the motion not to insist on those amendments was negatived by equally divided votes, with the effect that the amendments were lost. On this occasion Senator Xenophon was not placated, but Senator Fielding supported the government on the basis of further undertakings on this subject. The bill then passed without the disputed amendments. The opponents of the bill had the option of locking the bill in the Senate; although there was no motion for a third reading, because the issues in dispute were the subject of amendments rather than requests and the bill had already been read a third time, the passage of the bill could have been prevented by negating procedural motions following the failure of the amendments to keep majority support (see *Odgers*, 12th ed., p. 258), but this option was not taken.

It is not often nowadays that the Senate refuses to exempt bills from the deadline for receipt of government bills contained in standing order 111, but a significant occasion of this occurred on 18 March when exemption was refused for the legislation whereby the government would join with the major banks to guarantee investment in construction projects. Although the government claimed that the legislation was urgent because of the possibility of the collapse of projects, both senators Fielding and Xenophon believed that the

bill should be more carefully considered because of the huge sums of money involved in the proposed guarantees.

ORDERS FOR PRODUCTION OF DOCUMENTS

An order was passed on 11 March for documents relating to health insurance, with the titles and file numbers of the documents listed in the motion. The government made a statement on 16 March indicating that the files were extremely voluminous, but promising a response.

A revised version of the motion requiring the production to the Select Committee on Fuel and Energy of documents relating to modelling for the government's Carbon Pollution Reduction Scheme (see Bulletin no. 228, p. 3) was passed on 11 March. The committee produced letters from the universities which participated in the modelling, indicating that, contrary to the government's claim of commercial confidentiality, they had no objection to the production of the documents in response to the order. This satisfied a majority of the Senate that the documents should be produced. The government, however, again refused to provide the documents on 17 March. Senator Cormann tabled a further letter from a university on 19 March indicating that the university has no objection to the production of the material, but the matter remains unresolved. Senator Cormann also gave notice on 17 March of a motion designed to set out the processes whereby claims of public interest immunity should be made before Senate committees. This motion is listed for consideration in the budget sittings in May.

An order for documents relating to water policy passed on 3 December 2008 was answered by the production of documents on 12 March, seemingly meeting the requirements of the order.

SELECT COMMITTEE ON CLIMATE CHANGE

A new select committee was established on 11 March on the momentous subject of climate change policy, in spite of a successful government motion referring the documents the government tabled on its climate change policy to the Economics Committee. There will therefore be two major Senate inquiries into the subject.

A ballot was required on 18 March to fill the position on the select committee allocated to the independent senators, Senators Fielding and Xenophon having both nominated for the position. Senator Xenophon was successful in the ballot.

ORDINARY ANNUAL SERVICES OF THE GOVERNMENT

An amendment to the motion for the second reading of the additional appropriation bills was passed on 20 March again calling on the government to respond to the Appropriations and Staffing Committee's 45th report which dealt with this subject and was presented in March

2008. This amendment arose from the estimates report of the Finance and Public Administration Committee, which referred to evidence given at its estimates hearing and also called upon the government to respond. The appropriation bills in 2008 were the subject of a similar amendment. The additional appropriation bills again included in the bill for the ordinary annual services matters that are clearly not ordinary annual services, but again there was no time for any substantive attention to be given to this when the bills were dealt with in the Senate, their passage having been delayed until the last day of the sittings because of the other major legislation taking so much time.

COMMITTEE REPORTS AND REFERENCES

Many committee reports on bills were tabled on the first day of the sittings, having been presented to the President over the non-sitting period. Not all of the bills were dealt with during the sittings.

The Economics Committee received on 18 March a reference on the purchase of Australian assets by foreign government-owned investment funds, a major matter of political controversy.

The extensive reference to the Legal and Constitutional Affairs Committee on the operation of the judicial system was withdrawn on 19 March and replaced by two separate references on the subject, as a result of an agreement among the parties.

The principle that only the Senate can withdraw a reference from a Senate committee (see Bulletin no. 229, p. 5) was further illustrated on 11 March when an Opposition motion to withdraw a reference from the Rural and Regional Affairs and Transport Committee was negatived.

The willingness of the Senate to devote time to debate major committee reports even in the press of business at the end of a period of sittings was demonstrated by debate on the report of the Community Affairs Committee on petrol sniffing on 19 March.

Similarly, a major report by the Environment, Communications and the Arts Committee on the operation of the Environment Protection and Biodiversity Conservation Act was debated on 18 March.

SCRUTINY OF BILLS COMMITTEE

In presenting a report on 18 March, the Scrutiny of Bills Committee expressed its intention to scrutinise closely the seeming proliferation of provisions in legislation authorising

background checks of individuals. The committee also referred to the retirement of its legal adviser for the past 25 years, Professor Jim Davis.

PROCEDURAL CHANGES

The Senate adopted on 10 March the report of the Procedure Committee, thereby inserting into the standing orders four temporary procedural orders (see Bulletin no. 228, p. 4).

VACANCY FILLED

The vacancy left by the resignation of Senator Ellison was filled on 12 March with the swearing in of Senator Chris Back.

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

Inquiries: Clerk's Office
(02) 6277 3364