



DEPARTMENT OF THE SENATE

PROCEDURAL INFORMATION BULLETIN

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For the sitting period 12 – 22 September 2011

DEFERRED DIVISIONS

Under the resolution of the Senate of 22 November 2010, deferred divisions are now quite common on Mondays before 12.30pm. The resolution provides for the matter before the Senate to be adjourned till after 12.30pm if a division is called for. On 12 September a division was called on a motion to report progress from committee of the whole. The chair is required to put such a motion without amendment or debate. With only a few minutes remaining till 12.30pm, the committee allowed a senator leave to make a statement and the vote was then taken. It is arguable that such a motion is not capable of being deferred and if a division is called, then the motion lapses. It is a motion that can be moved again (but not within 15 minutes of having been moved previously).

On 19 September a division was called on amendments in committee of the whole. As there was no further debate required on the bill, the chair reported progress and further consideration of the bill was automatically made an order of the day for a later hour.

REPORTS ON BILLS

Unusual reports on two bills were presented by the Joint Select Committee on Gambling Reform. The committee recommended that the inquiries not be proceeded with and that they be discharged from the Notice Paper. This was despite one of the references being transferred from the Community Affairs Legislation Committee to the joint select committee because of the subject matter of the bill. The joint committee reported that one of the bills had been the subject of an inquiry in the previous parliament and the issues raised by the other bill had apparently been considered in an earlier report. It appears that the joint select committee has followed the example set by House of Representatives committees to which bills have been referred, in deciding not to inquire further into them. While it may have some rationale where committees are specifically given that discretion – such as in the Senate's referral of time-critical budget-related bills to committees during estimates hearings (see [Bulletin No. 252](#)) – it is nonetheless a development to watch.

ORDINARY ANNUAL SERVICES OF THE GOVERNMENT

The President's regular correspondence with the Minister for Finance and Deregulation, identifying items possibly included in Appropriation Bill No 1 inappropriately was tabled in June. The Minister's response was tabled on 12 September. The response pointed out that the Senate had agreed to the bills without requests, but did not acknowledge the problematic programming of the bills under which they were not received from the House of Representatives until late on the penultimate day of the budget sitting with only one sitting day left to debate them, along with other important bills which there was pressure on the Senate to pass.

COMMITTEES MEETING TOGETHER

While an earlier version of standing order 25 empowered legislation and references committees to meet together, committees can only meet together if authorised by the Senate. On 12 September the Senate authorised the Senators' Interests Committee to confer with the Privileges Committee in connection with its inquiry into a draft code of conduct for senators. The resolution acts as an instruction to the committees, permitting them to do something which they are not otherwise authorised to do.

SCHEDULING OF CARBON TAX LEGISLATION

The bills to impose and otherwise provide for the much heralded carbon tax (under the description, Australia's Clean Energy Future) were introduced into the House of Representatives during the fortnight. While debate on the bills commenced almost immediately, the provisions of the bills were referred to a [joint select committee](#) established for the purpose, with a short reporting timeframe and a membership of 14 (but only five senators). The Senate's agreement to the joint select committee was slightly delayed when leave was refused to consider the message from the House of Representatives immediately (see standing order [155](#)). The matter was brought back on shortly afterwards. Members were appointed to the committee the same day. A motion moved unsuccessfully by Opposition senators on 22 September queried aspects of the committee's operations, including its membership, deputy chair and schedule of hearings.

In preparation for a heavy legislation program till the end of the year, the Manager of Government Business gave notice of motion for each day during the first sitting week to extend the hours of meeting on certain days and to impose time limits on the consideration of bills. Each day, the notice was withdrawn when it became clear there was no support for it.

In the meantime, the contrast between the extensive committee inquiries into the previous government's goods and services tax legislation, stretching over five months, and the truncated committee scrutiny of the carbon tax bills was highlighted in questions without notice and matters of public interest discussions.

A motion to provide for an additional sitting week in November, slightly extended hours on some days and a time limit on consideration of the clean energy bills was finally agreed to on 21 September after extensive debate.

When the Selection of Bills Committee considered the bills, it was unable to reach agreement on their referral (see [Report no. 13](#)). An amendment moved by the Opposition to the motion to adopt the report proposed to refer all the bills in the package to all legislation committees with a reporting date early in 2012. The amendment was defeated.

PERSONAL EXPLANATIONS AND EXPLANATIONS OF SPEECHES

The standing orders provide two opportunities for senators to explain matters. By leave, a senator may make a personal explanation under standing order [190](#). Under standing order [191](#), a senator may speak again in a debate, without leave, to explain part of their speech that has been misrepresented or misquoted by a later speaker. When

Senator Boswell sought to use standing order 191 after the question had been put on a motion, he was ruled out of order and invited to seek leave to make a personal explanation instead (on the basis that the opportunity under standing order 191 exists only during the course of a debate, not after it has concluded). The President made a statement later on 13 September affirming this interpretation.

Another statement was made by the President on 15 September on the rules of debate and unparliamentary language.

PARLIAMENTARY PRIVILEGE

From time to time senators use the protection of parliamentary privilege to raise serious allegations. There is invariably heated debate in the community about the use of parliamentary privilege for such purposes. In 1988, the Senate adopted several resolutions on the recommendation of the Joint Select Committee on Parliamentary Privilege including [Privilege Resolution 9](#) which enjoins senators to use their great power of freedom of speech responsibly, having regard to a number of factors including the damage that can be done to the reputation of individuals from allegations made under parliamentary privilege and the limited opportunities people have to respond. Having signalled his intention to disclose the identity of a priest who had been the subject of serious allegations, Senator Xenophon named the priest on the adjournment debate on 13 September, after being cautioned by the President who drew the Senate's attention to Privilege Resolution 9.

While persons in this situation have access to the right of reply procedures in [Privilege Resolution 5](#) it would also be open to the Senate to censure the senator concerned, if there was a view that the senator had overstepped the mark. This is a different issue to a matter that may give rise to an allegation of contempt. Conduct constitutes contempt only if it meets the threshold test in section 4 of the *Parliamentary Privileges Act 1987* which involves an improper interference with the ability of a House, committee or member to carry out their functions or freely perform their duties.

The person affected did make an application under Resolution 5 and the Senate, on 22 September, adopted the [report](#) of the Privileges Committee recommending the incorporation of a response in Hansard.

On 21 September, Senator Williams also used a speech to publish details of the victims of an alleged conman, expressing his frustration at the failure of regulatory authorities to investigate these matters. The speech was reported in the press.

GIVING NOTICE OF A MOTION IN GENERAL TERMS

Standing order [76\(6\)](#) allows a senator to give notice of a motion in general terms, provided that the complete motion is delivered to the Clerk at least one day before it is due to be moved. On 25 August, Senator Bob Brown gave such a notice in relation to a proposed inquiry into the media in Australia. In the meantime, the Government announced a non-parliamentary inquiry into the media and Senator Brown allowed his notice to lapse by not providing the complete terms to the table.

COMMITTEES

On 15 September, the Regulations and Ordinances Committee tabled its regular volume of ministerial correspondence which gives an account of the issues the committee raises with ministers and the responses given.

The Scrutiny of Bills Committee highlighted more problems with national scheme or referred powers legislation in its [report](#) on the Australian Energy Market Amendment (National Energy Retail Law) Bill 2011 and gently chided the government for declining the committee's offer of consultation on future such legislation to avoid the technical problems that invariably arise with these schemes.

The [Government response](#) to the report of the Joint Publications Committee on an electronic parliamentary papers series was finally presented on 15 September, the Presiding Officers' response having been tabled in November last year. The one paragraph response to one of the committee's recommendations agrees to the provision of electronic copies of reports by author departments.

Standing order [37\(3\)](#) provides for the President to grant access to unpublished committee documents after 10 years or, in the case of in camera evidence, after 30 years. The President reported to the Senate on 20 September that he had granted access to in camera evidence of a 1975 inquiry by the Standing Committee on Foreign Affairs and Defence for the purposes of academic research.

Several substantial reports were tabled, including on [koalas](#), [state government insurance](#) and [events on the HMAS Success](#), in addition to reports on legislation.

ORDERS FOR THE PRODUCTION OF DOCUMENTS

An order requiring the government to table details of audits conducted under the Medicare Chronic Disease Dental Scheme was agreed to on 19 September, while an order for information regarding the background to the recent decision to allow the importation of New Zealand apples was agreed to on 20 September. Both orders fall due next month.

DISALLOWANCE

The proposed disallowance of certain migration regulations was unsuccessful on 21 September while notices of motion to disallow certain Fair Work regulations were withdrawn on 22 September when the government agreed to repeal and remake them to take concerns into account. Because the regulations were due to come into effect on 1 October, the notices were withdrawn by leave rather than using the process provided for in standing order [78](#). This was to facilitate the necessary remedial action.

FORMAL BUSINESS

More problems were experienced in dealing with formal motions during the fortnight when a senator was refused leave to move an amendment to another senator's motion. A motion to suspend standing orders to permit the moving of the amendment

also failed. Senator Bob Brown subsequently gave a new contingent notice for the suspension of standing orders when leave is denied to move an amendment to a formal motion. The contingent notice does not create a right to move the amendment. It simply lowers the necessary threshold for a successful suspension motion from an absolute to a simple majority of the Senate (that is, from 39 senators to a majority of senators voting). In a rare move on 22 September, formality was denied to move a motion. The subsequent motion to suspend standing orders (pursuant to contingent notice) was lost. It appears that the aim of formal business, to deal with motions without amendment or debate, is still a distant goal in some cases.

SPEAKING WHILE SEATED

Before the standing orders were rewritten in 1989, there was a standing order which permitted a senator who was unable conveniently to stand because of illness or infirmity to speak while seated “by special indulgence of the Senate”. This standing order was deleted on the basis that it was a matter best left to practice. On 12 September, leave was granted for a senator to speak while seated and to vote from a wheelchair or mobility aid because of temporary incapacity.

PETITION DISPUTING AN ELECTION

The background to a petition lodged pursuant to standing order [207](#) (which has only residual operation) was explained in [Bulletin No. 254](#). A motion to return the petitioner’s surety, moved by the Government on 22 September, was agreed to unanimously, a statement by the mover indicating that this action concluded the Senate’s consideration of the matter.

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/index.htm

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