



DEPARTMENT OF THE SENATE

PROCEDURAL INFORMATION BULLETIN

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For the sitting period 4 - 7 July 2011

NEW SENATE

The new Senate met for the first time on 4 July 2011 and senators chosen at the August 2010 election were sworn in by the Governor-General. The Governor-General performs this function under section 42 of the Constitution but normally delegates to the President of the Senate the authority to administer the oath or affirmation of allegiance. The President's term having expired, the Governor-General performed the role personally. Subsequently, Senator Hogg was re-elected as President of the Senate and Senator Parry was elected as Deputy President and Chairman of Committees. Both positions were contested by Senator Ludlam who was nominated by the Leader of the Australian Greens (Senator Bob Brown). Accordingly, ballots were held for both positions. For details of ballots held for these positions since 1901, see Appendices 2 and 3 of the *Annotated Standing Orders of the Australian Senate* (2009).

ORDER RELATING TO THE PRESIDENT OF FAIR WORK AUSTRALIA

An early item of business was a motion to relax the Senate's order compelling the attendance of the President of Fair Work Australia at all estimates hearings where the estimates of FWA were being considered (see Bulletin Nos. [236](#), [238](#) and [243](#)). Instead, the motion indicated the Senate's expectation that the President would appear if requested to do so by the Education, Employment and Workplace Relations Legislation Committee. An objection was raised to the motion being dealt with as a formal motion and it did not proceed. It remains on the Notice Paper but the opportunity to discover (or "fast-track" it) has been spent. There is nothing to prevent notice of the same or a similar motion being given again. The option of suspending standing orders is available to deal with the current or any future notice, should a majority of the Senate seek to pursue the matter. The motion could also be moved by leave (unanimous consent).

COMMITTEE REPORTS

Major reports presented out of sitting included reports of the [Select Committee on the Scrutiny of New Taxes](#) on the proposed mining tax, the report of the [Joint Select Committee on the Christmas Island Tragedy of 15 December 2010](#) and the [Select Committee on the Reform of the Australian Federation](#). The last two were subject of debate on 7 July.

REQUEST TO THE RESERVE BANK OF AUSTRALIA

A resolution requesting the Reserve Bank of Australia to provide the Senate with a report on bank fees and charges, agreed to without dissent on 21 June 2011, was met, first, with a letter from an officer of the Bank informing the Senate that the matter was in the hands of the Treasurer and, secondly, with a response the next day (5 July) in the form of the Bank's published *Bulletin* for the June quarter 2011 on banking fees in Australia. It is doubtful that the Senate had published information in mind when the request was made but the matter has not yet been followed up.

FORMAL BUSINESS

In its most recent report (see Bulletin No. [252](#)), the Procedure Committee made suggestions to improve the conduct of formal business. Under standing order 66, motions may be dealt with at a certain time of day as "formal business". This means that they may be moved and put without amendment or debate. By this means, a great deal of business may be "fast-tracked", including routine motions relating to the transaction of committee business or the introduction of bills, as well as motions addressing substantive policy issues, usually proposed by non-government senators.

From time to time, various difficulties with the procedure have arisen and the Procedure Committee has made recommendations to address those difficulties. The most recent difficulty referred to that committee was the incidence of motions being amended (by their movers) and the proliferation of statements being made, by leave, that, in effect, amounted to a *de facto* debate.

To address these concerns, the committee made the following suggestions:

- if senators wish to amend their notices of motion, then, generally, as a courtesy to the Senate, they should postpone the notice till the next day of sitting to enable them to use the procedure under standing order 77 to amend the notice in writing so that the notice can appear in its amended form in the next day's *Notice Paper*;
- parties were encouraged to use internal means to limit the number of senators seeking leave to make statements on motions to one from each party grouping.

While they have been adopted by the Senate, the impact of these suggestions could be described as a work in progress if this week's evidence is anything to go by. Senators continued to amend notices on the floor before seeking formality and, on 5 July, a senator made three statements by leave in relation to one motion condemning a boycott of Israel by a local government body. There were also two attempts to amend the motion, with senators being given leave to move the amendments. The President made a statement during formal business on 7 July, drawing senators' attention to the report.

LATE ANSWERS TO QUESTIONS ON NOTICE

After sporadic use in recent times, the procedure under standing order 74(5) by means of which senators can seek explanations for answers that have been outstanding for more than 30 days was used on two occasions during the week (4 and 5 July). On the

second occasion, a lengthy debate demonstrated one of the mechanism's inbuilt procedural penalties – the consumption of time that could otherwise be spent on government business.

ALLOCATION OF QUESTIONS AT QUESTION TIME

The allocation of questions is not formally provided for by any rule or resolution of the Senate but has evolved in response to its changing composition. The Procedure Committee has previously reported on the matter, endorsing the principle of proportionality in the allocation of questions. The allocation of questions was altered this week to take into account the larger number of Australian Greens senators. The Greens now receive more questions and, on some days, further up the list than previously.

LEGISLATION

The importance of the work of the Scrutiny of Bills Committee, highlighted in the last Bulletin, was again underlined this week in relation to the Social Security and Other Legislation Amendment (Miscellaneous Measures) Bill 2011 which contained the Government's response to a recent decision in the Supreme Court of South Australia, the effect of which was to call into question the validity of a large number of convictions for social security fraud. The bill was regarded as urgent but it was not brought on until after the committee's *Alert Digest* was tabled on 6 July. The committee commented extensively on the issue of the retrospective application of the provisions and its concerns in principle with retrospectivity. The speed with which the bill was considered means that the Senate did not have the benefit of the Scrutiny of Bills Committee's report and its considered analysis of the minister's response to the committee's *Alert Digest*. Nonetheless, the issue was well canvassed in a relatively brief second reading debate on the bill which was passed without amendment and agreed to by the House of Representatives later the same day. In its [9th report](#), presented on 7 July, the Selection of Bills Committee noted that it had considered the bill but that it had already been passed by both Houses.

Bulletin No. [249](#) reported on the National Vocational Education and Training Regulator Bill 2010 [2011] and related bills which gave effect to a state referral of powers, and the general problem for effective parliamentary scrutiny posed by bills of this nature or bills reflecting inter-governmental agreements. In its [report](#) on the bills, the Education, Employment and Workplace Relations Legislation Committee recommended that "in future, exposure drafts of legislation be made available for examination by parliamentary committees prior to their adoption as text-based referrals of power by state legislatures, thereby assisting committees to recommend amendments to bills, if necessary, without threatening the viability of the referral of powers". The same principle applies to national uniform legislation or national scheme legislation.

On 6 July, when moving their referral to the Economics Legislation Committee, the Manager of Government Business, Senator Ludwig, tabled three draft bills, settled with state/territory officials, relating to the registration of business names. The drafts thus represent working drafts which have not yet gone to the relevant intergovernmental forum or ministerial council for approval. The referral of draft bills at this stage of their

development indicates that concerns raised by parliaments over the past two decades are beginning to be heeded. Such referrals allow parliamentary scrutiny of, and input to, legislative proposals and represent a better process than the presentation to the parliament of such bills, following agreements at extra-parliamentary, intergovernmental forums, as a *fait accompli*.

Several relatively non-controversial bills were agreed to, with or without amendment, but most time was spent on a package of bills establishing the Carbon Credits (Carbon Farming Initiative) scheme. Numerous amendments, both government and non-government, were agreed to the principal bill but, by the end of the week, consideration of the package had not been finalised.

Two private senator's bills were debated during the time for consideration of orders of the day relating to private senators' bills on Thursday morning, and during general business on Thursday afternoon – the Carbon Tax Plebiscite Bill 2011 and the Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2010 [No. 2] (the latter being the subject of one of the more substantial debates on such legislation in recent years) (and see Bulletin No. [239](#) for more unusual features of this bill's consideration). Second reading debates on both bills will continue should they be nominated again for consideration.

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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