



DEPARTMENT OF THE SENATE

PROCEDURAL INFORMATION BULLETIN

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For the sitting period 11 – 13 October 2011
and Supplementary Budget Estimates 17 – 20 October 2011

The short sitting week was characterised by an unusual level of resort to the closure in various circumstances and a degree of dissension over the introduction into the Senate of the bills to implement the government's proposed carbon tax. Several controversial issues were also pursued during the supplementary budget estimates hearings, the first for many years to be held independently of concurrent sittings of the House of Representatives.

CLOSURE

The closure is a motion that the question be now put. It must be determined without debate and, if agreed to, requires that the original question be put immediately. In the Senate, it may not be moved by a senator who has already spoken in the debate, unless that senator is also a minister (standing order [199](#)). If used in committee of the whole it may not be moved again within 15 minutes of having been used (standing order [144](#)). It is one of the few ways provided in the standing orders for limiting debate, although the guillotine (standing order [142](#)) is a more effective way of limiting debate on legislation where, potentially, there are many questions to be resolved. The use of such limitations is unusual because the purpose of parliamentary deliberation is to debate issues to enable decisions to be taken. Where a determined minority prolongs debate against the wishes of a majority, however, the closure is available to give effect to those wishes. It may also be used to ensure a decision is taken when only limited time is available.

One of the first items of business of the week was the further consideration in committee of the whole of the Higher Education Legislation Amendment (Student Services and Amenities) Bill 2010 which had been the subject of extensive debate in the previous sitting period. The closure was moved on a question to omit part of the bill and also on the question that the bill stand as printed, the penultimate question put on legislation during the committee of the whole stage. The closure was also moved on the third reading. The following day, the closure was used to truncate debate on a motion to change the hours of meeting and routine of business to ensure that the carbon tax bills could be introduced, as well as on a motion to exempt them from the bills cut-off procedures in standing order [111](#). Later on 12 October, the closure was moved on motions necessary to introduce and deal with the preliminary stages of the bills (see below, under "Expedited proceedings"). Finally, the closure was moved by an Opposition senator during the general business debate on 13 October to bring on a vote on the motion. Divisions on these motions were possible only because the rule prohibiting divisions after 4.30 pm on Thursdays had been lifted as a precautionary measure to enable further consideration of the carbon tax bills or other government business if required.

EXPEDITED PROCEEDINGS

Standing order [113](#) provides a method of expediting proceedings on bills, including by taking multiple bills together and removing the requirements otherwise imposed by the standing orders for stages of bills to be dealt with on different days and for the bill to be reprinted at various points. These proceedings are now employed for all bills but their application includes safeguards that enable senators to challenge their use. The safeguards allow senators to debate and vote on the different proposals for expedition.

When messages carrying the eighteen related carbon tax bills were reported on 12 October, the minister moved the usual motion, that the bills may proceed without formalities (that is, skip the staggered consideration and the reprinting requirements), may be taken together (thereby allowing 18 bills to be determined with one question at each stage) and be now read a first time. The Opposition asked for the question to be divided and debate ensued before the closure was moved and each element of the original motion was voted on separately. While the first two elements of the compound motion may be separately debated (pursuant to a request that those elements be individually split off), the third element (for the first reading of the bills) may not be debated. A complicating factor is that the standing orders allow debate on the first reading of a bill which the Senate may not amend; that is, bills imposing taxation or appropriating money for the ordinary annual services of the government. There is no requirement for relevance in such debates, a residual right from early times before the development of numerous opportunities for senators to raise matters on a wide range of issues. However, this right is not available where the debatable bills are part of a package of otherwise non-debatable bills. This complication was not raised on 12 October and only the first element of the motion was debated.

PROCEDURAL PENALTIES

In order to contest the introduction and consideration of the carbon tax bills and related issues, the Opposition employed several procedural devices during the week, including extended debate on motions, motions to suspend standing orders and challenges to the chair. Senator Macdonald sought to highlight the position of the Australian Greens on the use of limitations of debate on 12 October by seeking leave to move a motion on the matter and then moving to suspend standing orders when leave was denied, a debate which was also truncated by the closure. The allocation of the call in that debate was the subject of another attempt to move a motion by leave and to suspend standing orders when leave was denied. That motion, too, was truncated by the closure.

Earlier in the day, during discovery of formal business, formality was denied to several motions seeking authorisation for various joint committees to hold public hearings during the sittings of the Senate in the following sitting period when the carbon tax bills are due to be debated under a limitation of time. A similar motion, moved by leave on 13 October, was agreed to after a division on the matter. It appears that joint committees will face difficulties in gaining authorisation to meet during the sittings of the Senate while the carbon tax debate is on foot.

DISSENT FROM RULING OF THE CHAIR

The week ended with a motion of dissent from a ruling of the President that the motion before the chair had to be disposed of before another, unrelated motion could be entertained. While this is a fundamental rule of orderly procedure, confusion apparently arose because of a belief that anything can be done if leave is granted. There are obviously limitations to this principle. The controversy arose during consideration of committee reports and government responses after general business on 13 October (at a time when the usual prohibition on holding divisions at this time had been lifted). While a motion to take note of the report of the Select Committee on the Scrutiny of New Taxes was before the chair, Senator Abetz sought leave to move a motion in relation to a vote on the carbon tax bills. When the President ruled as indicated, Senator Macdonald used the procedures under standing order [198](#) to dissent, in writing, from the President's ruling and then to move that the question of dissent required immediate determination (rather than being automatically adjourned till the next sitting day). The motion was lost, Senator Macdonald withdrew the motion of dissent by leave and, time having expired for that segment of business, the adjournment debate proceeded without incident.

FURTHER SUSPENSION OF STANDING ORDERS – CONDUCT OF COMMONWEALTH OMBUDSMAN

A further attempt to suspend standing orders occurred early on 13 October after leave was denied to Senator Abetz to move a motion to allow Senator Hanson-Young to make a 5-minute explanation to the Senate about her contact with the Commonwealth Ombudsman and the scripting of estimates questions, a controversy which had emerged from documents provided to the Legal and Constitutional Affairs References Committee and tabled on 11 October with its report on the so-called Malaysian solution. The motion was debated and negatived and the Ombudsman subsequently provided an explanation and an apology to the Finance and Public Administration Legislation Committee's estimates hearings on 17 October (see below). However, by the end of the reporting period, the Ombudsman had tendered his resignation.

MEMBERSHIP OF THE PRIVILEGES COMMITTEE

A motion proposed by the government to increase the membership of the Privileges Committee to 8 by the addition of a member nominated by a minority party or independent senators was agreed to on 11 October as a temporary order for the remainder of the Parliament. Later in the week, Senator Ludlam was appointed to the committee. This change means that the committee is more representative of the composition of the Senate and that cross-party coalitions are necessary to comprise a majority on a committee whose chair does not have a casting vote (but which rarely votes in any case, proceeding for the most part by consensus).

On 13 October, the committee presented another [report](#) recommending the incorporation in Hansard of a right of reply by a named individual, pursuant to [Privilege Resolution 5](#), a matter referred to in Bulletin No. [255](#). The Senate adopted the recommendation.

ORDER FOR PRODUCTION OF DOCUMENTS

An order agreed to in the last period of sittings for documents relating to apple imports (see Bulletin No. [255](#)) was responded to with correspondence from the responsible minister to the President, tabled on 11 October, about the volume of material involved. While noting that the return was overdue, the minister indicated his intention to comply with the order as soon as practicable, and the documents were presented out of sitting on the morning of the relevant estimates hearing the following week.

PRIVATE SENATORS' BILLS

The consideration of orders of the day relating to private senators' bills on 13 October was unusual in two respects. The first was that the bill considered was one sponsored by a government backbench senator, the first such bill to be considered for many years. The second unusual feature was that the bill had been received from the House of Representatives where it had been introduced by independent Member for Lyne, Mr Oakeshott. The bill proposed to amend the *Auditor-General Act 1997* to allow the Auditor-General to "follow the money" and audit "Commonwealth partners", including State governments and private firms in receipt of Commonwealth funds. The bill was a response to a report of the Joint Committee of Public Accounts and Audit, chaired by Mr Oakeshott, and was sponsored in the Senate by another committee member, Senator Bishop. Although consideration of the bill, and Opposition amendments to it, was not concluded in the available time, the bill is an indication of the potential of the so-called new paradigm to break the executive stranglehold on the initiation of legislation likely to pass both Houses. In the Senate, it is also a demonstration of the equal claims of backbench government senators to private senators' business time.

A motion, moved on 11 October by Senator Bob Brown, to provide for a vote to be taken on the third reading of the first bill considered at the time for consideration of private senators' bills on Thursday mornings, was defeated.

LEGISLATION

Most other legislation dealt with during the week was considered from 1 – 2 pm on 13 October, pursuant to an order of the Senate altering the routine of business for this purpose. Bills passed at this time included the package of bills implementing the intergovernmental agreement on the registration of business names and the remedial bill amending the vocational education and training regulator arrangements, both of which were the subject of comment in Bulletin Nos. [253](#) and [254](#).

UNANSWERED QUESTIONS

The procedure in standing order [74\(5\)](#) to follow up unanswered questions on notice, including questions taken on notice at estimates hearings, was used on several occasions during the sitting week with ministers providing explanations, and senators taking note of the explanations in each case.

APPROVAL OF DELEGATED LEGISLATION

A motion to approve a determination under the Extended Medicare Safety Net Arrangements, implemented by Senate amendments to the *Health Insurance Amendment (Extended Medicare Safety Net) Act 2009* was agreed to on 12 October (see Bulletin Nos. [252](#) and [235](#)).

COMMITTEE REPORTS

As well as the [report](#) on the proposed Malaysian solution, committee reports tabled during the period included two reports on the proposed carbon tax, one by the [Joint Select Committee on Australia's Clean Energy Future Legislation](#) (see Bulletin No. [255](#)) and one by the Opposition-dominated [Senate Select Committee on the Scrutiny of New Taxes](#) which is due to conclude on 30 November. The Community Affairs References Committee also tabled a [report](#) on the supply of Pharmaceutical Benefits Scheme medicines to remote area Aboriginal Health Services.

Supplementary Budget Estimates

PROCEDURAL ISSUES

This round of estimates hearings raised no new procedural issues, but many responses to requests for legal or other advice to government repeated the demonstrably misleading claim that such advice is never provided. As the pages of Hansard and these bulletins demonstrate, such advice has been provided on numerous occasions whenever governments have considered it in their interests to do so.

While individual senators pressed witnesses and insisted on the provision of properly formulated public interest immunity claims, most of which were taken on notice, there were no instances of committees meeting in private to determine whether to press the questions. In other words, most of the assertions made by officers and ministers were not contested, despite the resolution of the Senate of 13 May 2009 explicitly ruling out advice to, or internal deliberations of, government as a sufficient statement for the purposes of the resolution, in the absence of specification of harm to the public interest that could result from disclosure of the information.

Whether the Freedom of Information Act exemptions have any bearing on public interest grounds for seeking not to provide informational documents to committees was canvassed in evidence from the Office of the Official Secretary to the Governor-General. A senator sought access to practice and procedure manuals used in the administration of the honours and awards system, documents to which access had apparently been refused under FOI. Officers took on notice whether a public interest immunity claim would be made to the committee and the public interest grounds which would be advanced to support it, pointing out to the committee the difficulty of not having a minister to refer such matters to, as envisaged in the Senate's various resolutions on these matters. Senators at the hearing firmly rejected reliance on FOI exemptions as grounds for withholding information from the Senate or its committees, a position articulated by the Senate many years ago by its adoption of a Procedure Committee report rejecting any such link.

A clear demonstration of what has become an almost Pavlovian response to questions mentioning the words “advice”, “cabinet” or “legal” was provided on the first day of the hearings of the Finance and Public Administration Legislation Committee when a senator asked for the number of times that the National Security Subcommittee of Cabinet had met. Both the officer and minister responded that by long-standing practice such information is never provided, without referring to any public interest ground for this reluctance. A few minutes later another officer read the answer from the department’s recently tabled annual report!

Commercially sensitive matters, including investment losses sustained by the Future Fund, were also approached with the usual caution but, again, what seemed like ambit claims were generally not pressed.

The President of Fair Work Australia appeared pursuant to the order which remains in place despite repeated attempts to remove it (see Bulletin Nos. [254](#), [253](#) and [243](#)). Both Fair Work Australia and the Fair Work Ombudsman made lengthy appearances before the Education, Employment and Workplace Relations Legislation Committee because of the range of matters that senators had indicated an interest in.

Because of the controversy referred to above, the appearance of the Commonwealth Ombudsman was much anticipated. The Ombudsman apologised for his conduct and acknowledged that he had made an error of judgement but at the end of his testimony he offered to continue the conversation privately with senators. A senator indicated that he would place his questions on notice so that the questions and the answers to them would both be on the public record, and commented that this was a preferable course of action to private and selective communications with individual senators. As noted above, the Ombudsman had tendered his resignation before the end of the week.

In one committee, a senator sought to table a document with a “highly protected” classification that was an internal document of the agency being questioned. During a brief suspension of the committee, the senator and the agency head conferred about the operationally sensitive contents of the document. The document was not accepted by the committee and the senator confined his questions to the operationally non-sensitive parts of the document. The agency head indicated that an inquiry would be conducted into the apparent leak of the document from his agency, an inquiry which may well raise the issue of the application of parliamentary privilege to communications of this nature with senators, a matter within the scope of the current inquiry by the Privileges Committee into the adequacy of government guidelines for official witnesses appearing before parliamentary committees and related matters.

ISSUES CANVASSED

In the absence of concurrent sittings of the House of Representatives, the hearings proceeded with somewhat less fanfare than usual but the usual diligent, low-key and forensic approach of senators succeeded in exposing matters of significant public interest. The range of matters canvassed included the following:

- the cost of inquiries into the disposal of billiard tables by the Department of Parliamentary Services, a matter of controversy at previous hearings;

- potential weaknesses in the operation of the system of security cameras at Parliament House;
- the results of inspections of solar roof panels that found 20 percent of panels to be faulty and four percent of installations unsafe;
- the cost of the Malaysian solution to date;
- the cost of grants given to groups to promote action on climate change and generally to support the government's clean energy package;
- details of the decision to suspend the export of live cattle to Indonesia;
- the terms of the appointment of former Treasury Secretary, Dr Henry, as special adviser to the Prime Minister, and measures adopted to address perceived conflicts of interest in the role;
- confirmation from ABARE that it had not released the detailed information necessary to enable third parties to check Treasury's modelling of the carbon tax, contrary to earlier advice and extensive further canvassing of Treasury's modelling;
- the extent of the use of immunities attaching to AFP officers involved in the RAMSI mission;
- details of the administration of various grants programs (perhaps a sign that senators are using the information provided by agencies in lists of grants tabled before each round of estimates);
- the revelation that since the lifting of the import ban on New Zealand apples, 25 percent of consignments from New Zealand have been rejected in pre-export checks because of contamination with leaf matter or signs of apple leaf curling midges;
- the extent of wild bird deaths on Macquarie Island as a consequence of the feral animal eradication program of baiting;
- various investments by the Future Fund, including in the eurozone, tobacco companies and companies involved in the production of nuclear weapons;
- cuts in the number of air marshals deployed on domestic and international flights;
- progress on the latest draft plan for the Murray Darling Basin;
- the relationship between industrial regulation and productivity growth;
- plans to implement a national disability insurance scheme a year ahead of schedule;
- findings of an extensive survey of the mental health of ADF personnel;
- reasons for the Gyles inquiry (into events involving the HMAS Success) being established outside the usual panel arrangements and the higher cost as a consequence;
- the aftermath of the ADFA Skype-ing incident and the various reviews commissioned as a result;

- the continuing issue of the credibility of security clearance processes within the Defence Department;
- the record of the Foreign Investment Review Board in approving sales of rural land to overseas buyers;
- the Navy's reliance on leased amphibious support ships;
- the revelation that the risk on an elevated rate of adverse reaction to a child flu vaccine had been known to the regulatory authority well before the vaccine had been withdrawn;
- the number of cases in which Treasury did not prepare the regulatory impact statements required by the government's best practice regulatory guidelines (accounting for 25 percent of all such breaches);
- the quality of oversight of the GP Superclinics program;
- the further development of the MySchool website and political correctness in the history curriculum;
- remuneration of the Tax Commissioners, relative to that of the corporate and financial services regulators;
- underspending in the BER program;
- dangers posed by the European debt crisis to the Australian economy;
- the impact of a lower carbon price on budget forecasts;
- the impact of funding cuts on Australia's overseas representation.

As usual the hearings concluded with cross-portfolio Indigenous matters, although some matters were covered this time under individual portfolios.

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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