

CHAPTER 7

Meetings of the Senate

This chapter describes how meetings of the Senate occur and the rules governing meetings.

Executive government's power to determine sessions

Section 5 of the Constitution provides:

The Governor-General may appoint such times for holding the sessions of the Parliament as he thinks fit, and may also from time to time, by Proclamation or otherwise, prorogue the Parliament, and may in like manner dissolve the House of Representatives.

After any general election the Parliament shall be summoned to meet not later than thirty days after the day appointed for the return of the writs.

Under this section the Governor-General may terminate a session of the Parliament by proroguing it, and may then appoint the time for its next meeting. In practice these powers are exercised on the advice of the government.

When the Governor-General has specified a time for commencing a session of the Parliament, a formal opening of Parliament takes place. The procedures for the opening of Parliament vary according to whether the opening follows a prorogation of a session of Parliament, or a dissolution of the House of Representatives or of the two Houses under section 57 of the Constitution.¹

Parliaments and sessions

A new *Parliament* begins with the opening by the Governor-General on the first day the two Houses meet after a general election for the House of Representatives or for both Houses. The parliamentary *term* continues for three years after the date of the first sitting of the Houses, unless it is ended earlier by the dissolution of the House of Representatives or by the simultaneous dissolution of both Houses.

¹ For dissolutions of both Houses see Chapter 21, under Disagreements between the Houses.

Within the term of each Parliament, there may be sessions. A new session is also opened by the Governor-General and begins on the first day of sitting following a prorogation of Parliament. To prorogue Parliament means to bring to an end a session of Parliament without dissolving the House of Representatives or both Houses, and, therefore, without a subsequent election. Prorogation has the effect of terminating all business pending before the Houses and Parliament does not meet again until the date specified in the proroguing proclamation or until the Houses are summoned to meet again by the Governor-General.

Section 6 of the Constitution provides:

There shall be a session of the Parliament once at least in every year, so that twelve months shall not intervene between the last sitting of the Parliament in one session and its first sitting in the next session.

The Parliament complies with the intent of this section in that each year it has two or three sitting periods of several months duration. However, it has not been the practice in recent decades to divide a parliamentary term into annual sessions by the annual use of prorogation, and consequently a session will normally last for the duration of the term of the House of Representatives.

Although Parliament was regularly prorogued in the past, it has been prorogued without an accompanying dissolution on only four occasions since 1961. Two of these, in 1974 and 1977, were for the purpose of allowing openings of Parliament by the monarch during visits to Australia. On another occasion, in February 1968, Parliament was prorogued following the disappearance in the sea of Prime Minister Harold Holt in December 1967. On the fourth occasion, Parliament met for one day in November 1969 following an election for the House of Representatives on 25 October and was prorogued until the following March.

In March 1993 the government restored the practice, not followed since the 1920s, of proroguing the Parliament before dissolving the House of Representatives for the purpose of a general election.²

For further details, see below, under Meetings after prorogation or dissolution of House.

Place of meeting

In the proclamation fixing the time for the Parliament to meet at the beginning of a session, traditionally the Governor-General purports to direct the Houses as to the place of their meeting, although this is not authorised by the Constitution. Under its own resolution, the Senate meets

² See Chapter 19, Relations with the executive government under Effect of prorogation and of the dissolution of the House of Representatives on the Senate.

in its chamber in Parliament House in Canberra.³ It is arguable that, under section 125 of the Constitution, the Senate may not meet other than in the seat of government established under that section. In 2001, however, the Senate resolved to meet in Melbourne to commemorate the first meetings there in 1901, but no legislative business was transacted at the commemorative meetings.⁴

Opening of a new Parliament

The following procedures are followed for the opening of the first session of a new Parliament following a dissolution of the House of Representatives or of both Houses and a subsequent election.⁵

A “Welcome to Country” ceremony is conducted by local Indigenous people.⁶

At the hour (usually 10.30 or 11 am) named in the Governor-General’s proclamation, the President takes the chair (except following a dissolution of the Senate when there is no President) and the Clerk of the Senate reads the Proclamation summoning Parliament.

The Governor-General appoints one or more persons, usually justices of the High Court, as deputies in relation to certain aspects of the opening of Parliament.⁷ The deputies attend and request the attendance of the Members of the House of Representatives in the Senate chamber. When the members of the House of Representatives have assembled in the Senate chamber, the Clerk of the Senate then reads the commission appointing the deputies.

The senior deputy then announces that after members of the House of Representatives, senators representing the territories and any new senators appointed to fill casual vacancies have been sworn and the House has elected a Speaker, “the causes of His/Her Excellency calling this Parliament will be declared by him/her in person at this place” later that day. The deputy then retires and subsequently proceeds to the House of Representatives to administer the prescribed oath or affirmation to members of that House.

Should there be no President in office the senior deputy administers the oath or affirmation of allegiance to senators taking their seats for the first time (for an ordinary general election the territory senators and any appointees to casual vacancies).

If there is a President in office, the President ordinarily administers the oath or affirmation to such

3 2/6/1988, J.822.

4 9-10/5/2001, J.4219, 4221.

5 SO 1(1).

6 Adopted 23/6/2010, J.3671.

7 Constitution, s. 42 and s. 126.

senators; the commission to administer the oath or affirmation is usually given by the Governor-General to the President following the election of a senator to that office.

The President (or the Clerk if there is no President) tables the certificate of election of territory senators and certificates of the filling of vacancies, if any. Senators taking their seats for the first time then come to the Table to be sworn or make an affirmation and to sign the oath or affirmation form.

Except at openings of Parliament subsequent to a dissolution of both Houses, it is normally the case that the only senators taking their seats for the first time and requiring to be sworn at the opening of Parliament are senators representing the territories and senators appointed to fill casual vacancies. Procedures for the swearing of senators newly elected to fill periodical vacancies are described below and in Chapter 6, Senators.

If the office of President is vacant on the opening of Parliament, the Senate then proceeds to elect a President.⁸ After the President has been elected, the Leader of the Government in the Senate announces when and where the Governor-General will receive the President.

The sitting of the Senate is then suspended until such time as the Governor-General has appointed to declare in person the reasons for calling the Parliament together (that is, to make the opening speech).

Governor-General's speech

At the designated time (usually 3 pm) the Senate resumes and the Governor-General is announced. The Governor-General then summons the Members of the House of Representatives to the Senate chamber.

When the members of the House of Representatives have assembled in the Senate chamber the Governor-General delivers the opening speech, in which the causes of calling the Parliament together are declared. The speech, which is composed by the ministry, usually reviews recent events and gives a summary of the government's legislative program for the session.

Upon completion of the reading of the speech by the Governor-General, the President and the Speaker each receive a copy of the speech from a member of the Governor-General's staff. The Governor-General then retires.

8 See Chapter 5, Officers of the Senate: Parliamentary Administration.

Opening of a new session of an existing Parliament

The following procedures are followed for the opening of Parliament following a prorogation of the Parliament not accompanied by a dissolution of the House of Representatives or of both Houses.⁹

When there is a President in office, on the first day of a new session of an existing Parliament the President takes the chair at the appointed hour and the Clerk reads the proclamation which fixes the date for the assembling of Parliament following its prorogation. The arrival of the Governor-General is then announced. The certificate of election or choice of any senator whose term of office has begun since the last sitting of the Senate is then laid on the Table by the Clerk, and each such senator then makes and subscribes the oath or affirmation of allegiance. The procedure which then follows is the same as at the opening of a new Parliament following the arrival of the Governor-General (see above).

If there is no President in office at the opening of a new session of an existing Parliament the Senate is summoned by proclamation to meet at an earlier hour (usually in the morning) than the time fixed in the proclamation for the meeting of the members of the House of Representatives. At the hour appointed, members of the Senate assemble in the Senate chamber and the Clerk of the Senate reads the proclamation. The arrival of the deputy of the Governor-General is then announced. The deputy produces the commission from the Governor-General, which is then read by the Clerk. The deputy then informs the Senate that the Governor-General will at a future time declare the cause of calling Parliament together.

The certificate of election or choice of any senator whose term of office has begun since the last sitting of the Senate is then laid on the Table by the Clerk, and the deputy administers the oath or affirmation of allegiance to each such senator. The deputy then retires and the Senate proceeds to elect a President.

The proceedings which then follow are the same as at the opening of a new Parliament following the election of the President when that office is vacant.

Opening by the monarch

Standing order 4 provides that when the monarch is present in Australia and intends to indicate in person the cause of the calling together of Parliament, references to the Governor-General in those standing orders relating to the opening of Parliament should be read as references to the monarch. The monarch has opened the Parliament of the Commonwealth of Australia and delivered the opening speech on three occasions: 15 February 1954, 28 February 1974 and 8 March 1977.

9 SO 1(2).

Address-in-reply

Before the Governor-General's speech is reported to the Senate formal business may be transacted, petitions may be presented and notices given, and documents laid on the table.¹⁰ This standing order embodies a traditional assertion of the right of the Senate to transact some business before the opening speech is considered. The President then reports to the Senate the speech of the Governor-General. A motion for an address-in-reply to the speech may then be made, or the consideration of the speech may be made an order of the day for a future time.

While precedence is given to the address-in-reply debate until the adoption of the resolution, the standing orders permit formal business to be transacted.¹¹ Formal business which may be entered upon includes questions (without notice and on notice), the fixing of days and hours of meeting, the appointment of standing committees, motions for the printing of documents and matters which come within the category of Business of the Senate. A matter of privilege may also be raised. The standing order is also usually suspended to allow other business to be transacted before the address-in-reply is passed.

Standing order 194(2) exempts the debate on the address-in-reply from the usual requirements concerning relevance and anticipation and permits debate on any matter.

Amendments may be moved to the motion for the address-in-reply, and on several occasions have been agreed to.¹²

When the address has been agreed to, a motion is made that it be presented to the Governor-General by the President and any senators who may wish to accompany the President. This motion is usually moved by the Leader of the Government in the Senate. After the motion is carried, the President informs the Senate when the Governor-General is able to receive the address, and invites senators to be present on the occasion.

At Government House, the usual place for presenting the address, the President and accompanying senators and officers are received by the Governor-General. The President reads the address and presents it to the Governor-General who makes a reply. The President then introduces accompanying senators and officers to the Governor-General. At the earliest convenient opportunity the President reports to the Senate the presentation of the address and the reply of the Governor-General.

10 SO 3(1).

11 SO 3(4).

12 3/6/1914, J.59; 30/8/1973, J.330; 12/3/1974, J.45; 18/3/1976, J.82; 8/10/1996, J.652; 16/5/2002, J.366; 10/2/2005, J.372-3.

Swearing of senators elected to periodical vacancies

Periodical elections are almost invariably held together with elections for the House of Representatives and only rarely does their timing permit newly elected senators representing the states to be sworn at the subsequent opening of Parliament. Senators representing the territories, like members of the House of Representatives, are sworn in at the opening of Parliament, which must take place not later than 30 days after the return of the writs. Senators elected to represent the states at a periodical election do not begin their term of office until the first day of July following that election. This means that the date on which they are sworn and first take their seats does not normally coincide with the opening of a session of Parliament. As the Senate very rarely sits in July it is the practice for such newly-elected senators to be sworn on the next sitting day, usually in August.¹³

In this situation there is no President in office because, pursuant to standing order 5, the office of President becomes vacant “on the day next before the first sitting day of the Senate after the 30th day of June following a periodical election”.¹⁴

The Senate meets at the time appointed. The Governor-General, or the deputy appointed by the Governor-General to administer to newly-elected senators the oath or affirmation of allegiance, is announced. If a deputy is appointed, the commission to administer the oath or affirmation is produced and read by the Clerk.

The certificates of election for the members elected to fill periodical vacancies are laid on the table by the Clerk and each such senator is then sworn. In addition to being sworn or making the affirmation, senators are required to sign the Senators’ Roll on the day on which they take the oath or affirmation of allegiance. The Senators’ Roll is kept by the Clerk, and shows the names of the senators chosen for each state, the dates of election and of taking the oath, and the date and reason for ceasing to be a senator.

After the swearing of newly-elected senators the Governor-General, or the deputy, as the case may be, retires and the Senate proceeds to the election of a President.

Following the election of the President, and on resumption of the sitting after the President is presented to the Governor-General, the President announces the presentation and reports the Governor-General’s reply. Then the business of the Senate may be proceeded with in the ordinary course, including the appointment of the Deputy President and Chair of Committees.

Recent practice has been for the Governor-General personally to administer the oath or affirmation

13 An exception occurred in 2011 when a new Senate met for the first time on 4 July, the first July changeover since 1950.

14 See Chapter 5, Officers of the Senate: Parliamentary Administration.

to senators.

Proposals to change the opening of Parliament

The opening ceremony is not constitutionally required, and is otherwise objectionable in principle, for example, by conferring non-judicial functions (as deputies of the Governor-General) on judges and by involving the Governor-General in contentious and partisan statements composed by the prime minister in the opening speech. It is based on adaptations of British practice, which is itself constitutionally outmoded, without regard to Australia's constitutional arrangements.

Such a consideration leads to the further reflection that the constitutional provisions giving the executive government the power to dispense temporarily with the sittings of the Parliament are outmoded.¹⁵

Proposals to change the opening ceremony have been mooted many times.

Prior to the first meeting of the Parliament following the election in March 1993, the Prime Minister announced that the government intended to alter the opening ceremony, so that the two Houses would meet with the Governor-General in the Great Hall to hear the opening speech. Proposals of this kind had been mooted before, but, as with the 1990 election, nothing was done to put them into effect in time for the opening. The change did not occur, notwithstanding that procedures for the modified opening were devised, and the opening was in accordance with the old procedures.

The reason for this was that the opening procedures are contained in the standing orders of each House, and it would have been necessary for each House to suspend its standing orders and agree to the modified procedures after it first met in the morning, and after the members of the House of Representatives and the territory senators and any senators filling casual vacancies had been sworn. This could have been brought about in the House of Representatives by the government's control of that House, but the government could not be sure of carrying the necessary motion in the Senate, or of carrying it in time for the meeting with the Governor-General in the afternoon. The proposal was therefore abandoned.

The deliberation and agreement of the two Houses will be required to change the procedure, as occurred in 2010 when both Houses supported the inclusion of an Indigenous "Welcome to Country" ceremony before openings of Parliament. Such a ceremony had preceded the opening

15 See also Chapter 19, Relations with the Executive Government, under Effect of prorogation and of the dissolution of the House of Representatives on the Senate.

in 2008.¹⁶

Sittings and adjournment of the Senate

When a Parliament or a session of Parliament has been opened as described above, the Senate determines its own sittings.

A sitting of the Senate begins when the Senate first meets after an adjournment, and concludes when the Senate again adjourns, either till a specified time or a time to be fixed by a specified procedure. The bells are rung for five minutes prior to the time appointed for the commencement of a sitting, and the President then takes the chair to begin the sitting (SO49). Before proceeding to business the President recites the prayer prescribed by standing order⁵⁰, followed by an acknowledgement of country.¹⁷

Except where the standing orders provide for the President to adjourn the Senate without putting a question from the chair, the Senate adjourns only by its own resolution (SO 53). Where the Senate is to meet again at a time specified by the standing orders or by any special order, the Senate simply resolves to adjourn. If the time of the next meeting has not been so fixed, a resolution is passed fixing the time before the question for the adjournment is proposed.

Normally the Senate adjourns to a specified time, which has been fixed by an order setting a schedule of sitting days or an order setting the next meeting day at the end of a long adjournment. When adjourning for a period of time longer than normal, for example, at the beginning of the summer and winter long adjournments, the Senate may adjourn to a specified time or such other time as may be fixed by the President.

In exercising the power to fix another time of meeting, the President may exercise an independent discretion to change the time of meeting for any reason related to the orderly conduct of Senate proceedings. The President may set an earlier or a later time of meeting than that specified, and may alter a time of meeting which has been set. In exceptional circumstances the President may postpone a meeting of the Senate. For example, on 22 May 1973 the time appointed was 11 am, but the Canberra airport was closed due to fog and 20 senators were unable to land. With the concurrence of the party leaders, President Cormack ordered that the meeting of the Senate be postponed until 3 pm. There are also precedents for the President delaying the commencement of sittings where official functions have extended beyond the time fixed for the meeting of the Senate. On 17 September 2001 the President altered the time of meeting from 12.30 pm to 2 pm

16 23/6/2010, J.3671.

17 Adopted 26/10/2010, J.203.

to allow senators to attend a memorial service for victims of terrorist attacks in the United States.¹⁸

In exercising the power to alter the time of meeting the President also by convention acts upon the advice of the executive government; a statement of this convention was made by President Givens in 1916.¹⁹ The convention operates only for the consideration of government business and not for the political convenience of the government, for example, in deciding upon an early general election. In other words, it is not a substitute for the power of prorogation (see below). In 1972 the President, at the request of the Prime Minister, put senators on provisional notice for a meeting of the Senate on 4 August. The purpose of the proposed sitting was to deal with an emergency arising from a strike in the oil industry. On 3 August the Prime Minister advised the President that, in the light of developments that had taken place, he did not seek a meeting on 4 August and senators were so advised. Subsequently, the Senate met as originally planned, namely, 15 August 1972.

For adoption of a different approach to commencing an earlier meeting of the Senate for commemorative purposes, see below under Summoning the Senate when not sitting.

An adjournment resolution which empowers the President to change the time of meeting usually also empowers the Deputy President to act for the President if the President is not available. Where both the President and the Deputy President are to cease to be senators during a long adjournment, a special resolution is passed empowering the holders of those offices, as named persons, to exercise the power of altering the time of meeting.²⁰

The adjournment of the Senate may be moved at any time by or on behalf of a minister,²¹ but such a motion may be moved only when there is no other business before the chair, so that debate on a matter under consideration must be adjourned before the adjournment of the Senate is moved.

A senator who is not a minister may not move the adjournment of the Senate except by leave of the Senate or pursuant to a suspension of standing orders.²²

At the time specified by standing order 55 for each sitting day, the President proposes the question that the Senate do now adjourn, without a motion being moved (SO 54). If the Senate is in committee of the whole at that time, the Chair of Committees leaves the chair and reports to the

18 17/9/2001, J.4851; but see 27/2/2012, J. 2104, where the meeting time was delayed by means of a written request to the President on behalf of all senators, because of matters affecting internal party affairs of the government party.

19 SD, 29/9/1916, p. 9115.

20 12/6/1981, J.401.

21 SO 53(2).

22 See under Leave of the Senate and Suspension of standing orders, below.

Senate, and on that report being made the President proposes the question for the adjournment.

The question that the Senate do now adjourn is open to debate, and matters not relevant to the question may be debated.²³ This means that senators speaking to the motion may refer to any matters, and the question for the adjournment is one of the principal opportunities for senators to raise matters they wish to debate. A speaking time limit of 10 minutes per speaker applies.²⁴

There are, however, limitations on the debate. The normal rules of order, for example, relating to offensive words, apply to the debate.²⁵ It is not in order to anticipate debate on a matter on the Notice Paper,²⁶ although this rule is interpreted liberally, as explained in Chapter 10, Debate. It is also not in order to attempt to revisit a debate adjourned or concluded earlier in a sitting. It has been ruled, however, that this does not prevent a senator during the adjournment debate seeking an explanation about a matter relating to a debate earlier in the sitting.²⁷ Unconcluded proceedings in a committee cannot be debated.²⁸

The President adjourns the Senate without putting the question at the conclusion of debate on Tuesdays, and on other days at the conclusion of debate, at the expiration of 40 minutes or at the time specified, whichever is the earlier.

When a minister moves the adjournment, this is normally by agreement. If the adjournment were moved by a minister at a time not specified by order of the Senate, and it appeared that there was opposition to the adjournment, the chair would be obliged to put the question for the adjournment. This would prevent the Senate being adjourned against its will, and would be in keeping with standing order 53(1).

The question for the adjournment of the Senate may not be amended.²⁹

On 12 September 1972 President Cormack ruled that the question for the adjournment at 10.30 pm be not put until a point of order had been resolved. He considered that it was proper that there should reside in the chair a discretion to delay the question for the adjournment until a point of order had been determined, especially when it involved a serious matter of the conduct of a senator. This ruling is supported by standing order 197(3), which provides that all questions

23 SO 53(4).

24 This time limit may be extended to 20 minutes on Tuesday by leave or at the end of debate: SO 54(6), adopted 10/3/2009, J.1657-8.

25 SO 193.

26 SO 194(1), subject to (2).

27 SD, 30/10/1975, p. 1654.

28 SO 119.

29 SO 53(3).

of order, until decided, suspend the consideration and decision of every other question. The President further ruled that, as the time taken after 10.30 pm was outside the normal debating time and was for the purpose of finalising the matter of order, the speaking time of the senator affected would be calculated to 10.30 pm.³⁰

An order may be made that the Senate adjourn at a certain time. When the specified time is reached, the President interrupts the debate then proceeding and adjourns the Senate forthwith to the next sitting day.

Summoning of the Senate when not sitting

Apart from the power of the President to alter the specified time of the next meeting, the standing orders require the President to summon the Senate to meet during an adjournment at the request of an absolute majority of senators, represented, in the case of senators who are members of a party, by their party leaders or deputy leaders.³¹

This provision began its life as a special order first agreed to in 1967, was regularly incorporated in resolutions specifying the time of the next meeting, was incorporated into sessional orders in 1985, and finally included in the new standing orders adopted in 1989.³²

Meetings of the Senate under this provision were held on 20 June 1967 to consider the disallowance of postal and telephone charges regulations, and 9 July 1975 to consider the government's overseas loans activities. A meeting on 21 January 1991 was called to consider the Gulf war at the request of the government when it was apprehended that party leaders representing an absolute majority of senators would ask the President to summon the Senate. A meeting of the Senate was called on 7 November 2003, within a period of sittings, under this provision, to deal with urgent legislation.³³ A similar meeting was called on 3 November 2005 (a day on which estimates hearings were also held) to consider legislation relating to terrorism.³⁴

On 1 March 2011, the procedure was used to facilitate a meeting several hours in advance of the scheduled time to enable simultaneous observances on both sides of the Tasman Sea of the passage of a week since the Christchurch earthquake. Although the President has an independent discretion to alter the Senate's meeting time and has done so on the advice of the executive government, the discretion has only been used to delay meetings for reasons relating to the orderly conduct of

30 SD, pp. 790, 809.

31 SO 55(2)-(5).

32 For further details, see the *Annotated Standing Orders of the Australian Senate* under SO 55.

33 7/11/2003, J.2672.

34 3/11/2005, J.1300.

the Senate's business. As there was no such imperative on this occasion, it was considered more appropriate to rely on these provisions.³⁵

Meetings after prorogation or dissolution of House

Under section 5 of the Constitution, the Governor-General may by proclamation prorogue the Parliament. Prorogation, on the conventional interpretation, has the effect of terminating a session of Parliament until the date specified in the proclamation or until the Houses are summoned to meet again by the Governor-General, and of terminating all business pending before the Houses.

Prorogation is regarded as dispensing with sittings of the Senate which have been fixed by order of the Senate. Orders of the Senate setting its sitting days are regarded as operating only so long as the parliamentary session continues and as having no effect if a prorogation intervenes, unless express provision is made for sittings after prorogation (see below). Similarly, orders of the Senate directing committees to meet, for example, for estimates hearings, do not operate if a prorogation intervenes. Most committees have the power to meet after a prorogation and could meet if they choose to do so.

The Senate has not met after a prorogation and before the opening of the next session by the Governor-General. The question of whether it could do so has been the subject of differing opinions. These were contained in documents presented to the Senate on 19 and 22 October 1984. The documents were:

- Letter from the Attorney-General (Senator Greenwood) to the President of the Senate (Senator Cormack), 24 October 1972.
- Opinion by Mr R.J. Ellicott, when Solicitor-General.
- Opinion by Professor C. Howard, University of Melbourne, March 1973.
- Opinion by Professor G. Sawyer, Australian National University.
- In the matter of the Power of the Senate or its Committees to sit after dissolution or prorogation—Opinion by the Solicitor-General, Dr G. Griffith, 9 October 1984.
- The Power of the Senate or Its Committees to meet after a dissolution of the House of Representatives or a prorogation of the Parliament and the publication of a Committee Report when the Senate is not sitting—Paper by Senate Clerk-Assistant (Committees), Mr H. Evans, 18 October 1984.

The generally accepted view is that a prorogation, as well as terminating a session and pending

35 See Procedure Committee, Second report of 2011, PP 158/2011.

business, prevents the Houses of the Parliament meeting until they are summoned to meet by the Governor-General or they meet in accordance with the proclamation of prorogation. The opinion of Professor Howard, however, is that a prorogation does not prevent the Senate meeting. The basis of this view is that, while a prorogation prevents the Parliament as a whole meeting for legislative purposes, under Australia's constitutional arrangements the Senate may meet to transact its own business as it chooses.

The provisions in standing order 55, relating to the calling of the Senate to meet at the request of an absolute majority of senators, apply only to periods when the Senate is adjourned, as their history and their context in the standing orders indicate.

A prorogation does not, however, prevent Senate committees meeting if they are authorised by the Senate to do so. It may appear paradoxical that the Senate may authorise its committees to do what it cannot do itself, but the generally accepted view is that this is one of the powers of the Senate under section 49 of the Constitution.³⁶ Most Senate committees are empowered by the Senate to meet after a prorogation.

Under section 5 of the Constitution, the Governor-General may also by proclamation dissolve the House of Representatives.

Before 1928 it was the practice to prorogue the Parliament prior to a dissolution of the House of Representatives. This is also the practice in the United Kingdom. From 1928 to 1993 dissolutions of the House of Representatives occurred without a preceding prorogation. Due to an error in the wording of the dissolution proclamation, which arose from a misunderstanding of the procedures, the dissolution proclamations during that period included a phrase purporting to discharge senators from attendance, a phrase without any constitutional basis. The matter was the subject of correspondence between the Clerk of the Senate and the Official Secretary to the Governor-General, which was tabled in the Senate on 14 August 1991. At the 1993 general election the practice of proroguing the Parliament before a dissolution of the House of Representatives was restored.

The question arises whether the Senate may meet after a dissolution of the House of Representatives in the absence of a prorogation of Parliament. This question was also the subject of the various opinions tabled in the Senate on 19 and 22 October 1984. The government's legal advisers attempted to argue that the inclusion in a dissolution proclamation of the phrase purporting to discharge senators from attendance was the equivalent of a prorogation, ignoring the fact that that phrase was an error arising from confusion about the wording of previous proclamations. The Senate, however, concluded that there is nothing to prevent it meeting after a dissolution of the House of Representatives. A resolution was passed on 22 October 1984, in effect asserting

³⁶ See, for example, of the opinion of 9 October 1984 of the Solicitor-General.

the Senate's right to meet at that time. The resolution declared that, should the Senate meet after a dissolution of the House, the powers, privileges and immunities of the Senate under section 49 of the Constitution would be in force in respect of that meeting. The resolution also asserted the right of committees empowered by the Senate to do so to meet after a dissolution of the House.

The Senate has not met during a period when the House was dissolved, but Senate committees have often done so, and have also often met after a prorogation. Proceedings at such meetings have included the hearing of evidence in public session. Committee reports have also been presented.

If the Senate were to meet after a prorogation, the business before the Senate would be the business pending at the prorogation, and it would be for the Senate to determine which business it should pursue. The Senate's agenda, and those of its committees, are therefore regarded as continuing until the day before the opening of the next session.³⁷

Times of meeting

The days and times of meeting of the Senate are specified in standing order 55. It provides for meetings on Monday to Thursday of each week. The times of meeting are 12.30 pm on Mondays and Tuesdays and 9.30 am on other days.

There are normally three periods of sittings during a year, from February to March, May to June and August to December, with adjournments in between.

This pattern of sittings specified by the standing order is normally subject to some alteration in each period of sittings by a special order. At the beginning of each period a resolution specifies the days of sitting; usually the starting times are as provided by the standing order. It is now not normal for the Senate to sit on Fridays, which are reserved for committee meetings.

Suspension of sittings

During any sitting there are usually suspensions of the sitting, which means that the sitting is temporarily interrupted and resumes at the point in the routine of business at which the Senate left off. A suspension of a sitting is often followed by business taken at a fixed time, such as question time at 2 pm. A suspension of a sitting is therefore to be distinguished from an adjournment, which ends a sitting, so that when the Senate sits again the routine of business is commenced anew. Standing order 55 provides for suspensions of sittings at particular times.

37 For further treatment of this matter see Chapter 19, Relations with the Executive Government, under Effect of prorogation and of the dissolution of the House of Representatives on the Senate.

A sitting may also be suspended by a motion moved and carried when there is no other business before the chair. A minister may move such a motion without notice under standing order 56, but a senator who is not a minister may not move such a motion except by leave of the Senate or pursuant to a successful motion for the suspension of standing orders.³⁸

Occasionally a sitting is suspended over one or more days so that the Senate can resume on another day at the point in its business where it left off, without beginning the routine of business anew. For example, the sitting of the Senate which began at 10 am on Thursday, 12 November 1992 continued until 6.11 am on Friday, 13 November, because of protracted consideration of the appropriation bills in committee of the whole. A motion was then carried to suspend the sitting of the Senate until 2 pm on Monday, 16 November. When the Senate assembled on Monday the sitting continued, which meant that the consideration of business was resumed at the place in the routine of business where it was left off, and consideration of the appropriation bills proceeded. The sitting continued until 12.41 am on Tuesday, 17 November. A motion to suspend the sitting until 9.30 am that morning was then carried. When the sitting resumed consideration of the appropriation bills continued until concluded that afternoon. Similarly, the sitting which began on Thursday, 16 December 1993 continued on 17, 18, 20 and 21 December, with protracted proceedings on the Native Title Bill 1993, and the sitting of 9 July 1998 continued on 10 and 11 July 1998, mainly because of telecommunications legislation. In some instances the Senate has provided by order in advance for the suspension of its sittings.³⁹

The advantage of suspending a sitting instead of adjourning is that the Senate can continue with government business without interruption by other items in the routine of business, such as question time. On 17 November 1992, however, a special order was made to allow for question time on that day. If used excessively by a determined majority, the procedure could be severely restrictive of the rights of individual senators. The suspensions have been rationalised by the need to pass the appropriation bills and other urgent legislation, and the fact that the Senate was not originally scheduled to sit on the extra days, so that no scheduled sitting days were lost so far as other business was concerned.

– effect on delegated legislation

The extension of one sitting over three days raises the question of the effect of statutory provisions for the tabling of delegated legislation. Those provisions require delegated legislation to be tabled in the Senate within a specified number of sitting days, usually 6 sitting days, and legislation which is not tabled within the specified time ceases to have effect. It has not been determined whether a sitting extending over more than one day is one sitting day for the purposes of those statutory

38 These matters are explained in Chapter 8 under Leave of the Senate and Suspension of standing orders.

39 12/8/2004, J.3904.

provisions. Departments responsible for forwarding delegated legislation for tabling have been advised that to avoid any doubts they should assume that the days to which sittings are suspended are separate sitting days for the purposes of statutory tabling requirements.⁴⁰

40 See also Chapter 15, Delegated Legislation.

