

## CHAPTER 9

### Motions and amendments

This chapter describes how the Senate comes to decisions on items of business before it, by resolutions or orders which begin as motions moved by senators and which may be amended by the Senate before they are agreed to.

#### Resolutions and orders

The Senate makes decisions by resolutions and orders. A resolution is a statement of the Senate's opinion which does not direct that any action be taken in relation to the matter which is the subject of the resolution; for example, a resolution expressing concern about a situation in a foreign country. Orders are requirements that some action be taken by some person or body subject to the direction of the Senate; for example, an order directing that a standing committee inquire into and report upon a particular matter, and an order that documents be produced to the Senate by the person who has the custody of the documents.<sup>1</sup>

This distinction between resolutions and orders is not observed in usage. Generally speaking, only procedural orders, for example, the standing orders, and orders for the production of documents, are referred to as orders, while all other decisions, including many that are technically orders, are referred to as resolutions. Thus the group of orders concerned with matters of privilege agreed to by the Senate on 25 February 1988 are referred to as the Privilege Resolutions.

#### Motions

A resolution or an order begins as a motion, that is, a proposal submitted to the Senate by a senator. A motion moved by a senator is accepted by the chair only if the standing orders empower the senator to move it at the relevant time, and the terms of the motion conform with the rules of the Senate. If the chair accepts a motion moved by a senator, the chair puts the motion to the Senate in the form of a question. Debate may then ensue if the question is one which, under the rules of the Senate, may be debated. The question is then put again by the chair and voted upon by the Senate. If the Senate agrees to the motion it then becomes a resolution or order of the Senate.

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<sup>1</sup> For duration of resolutions and orders, see below.

## **Notice of motion**

Motions cannot be moved unless at least one sitting day's notice has been given,<sup>2</sup> except for motions which the standing orders authorise to be moved without notice. Notice of a motion is given by a senator stating its terms to the Senate and handing a signed copy to the Clerk, or by lodging the copy only, at the time provided in the routine of business for the giving of notices. Notices cannot be given at any other time except by leave of the Senate, but an exception to this rule is a notice of motion to refer a matter to one of the legislative and general purpose standing committees.<sup>3</sup>

If the Senate dispenses with or alters the routine of business in such a way as to supersede the time for giving notice, this removes only the opportunity to give notices orally, and senators may still lodge notices in writing. This is significant in respect of disallowance motions, where the time for giving notice is statutorily limited for most kinds of delegated legislation.<sup>4</sup>

Notice is not required for the following motions:

- (a) for the adjournment of the Senate, when moved by or on behalf of a minister under SO 53(2)
- (b) connected with the conduct of the business of the Senate, when moved by a minister under SO 56
- (c) to determine the postponement till another day of business for which a senator has lodged a postponement notification under SO 67
- (d) for the reference of a bill to a committee after the second reading under SO 115(2)
- (e) for a bill to be taken to the stage of the second reading being moved, without the delays otherwise imposed by the standing orders under SO 113(2)
- (f) for the consideration of a bill as an urgent bill, and subsequent motions, when moved by a minister under SO 142
- (g) for the chair of the committee of the whole to report progress and ask leave to sit again under SO 148(2)
- (h) for a message to be sent to the House of Representatives communicating a resolution of the Senate under SO 154
- (i) for a petition not to be received under SO 69(3)

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2 SO 76(10), 79.

3 SO 25(11); see also SO 81 for privilege motions

4 See Chapter 15, Delegated Legislation and Disallowance.

- (j) for taking note of a document presented by a minister after prayers under SO 61
- (k) relating to a committee report, at the times allocated on Wednesday and Thursday for the consideration of reports then presented under SO 62(4)
- (l) in relation to a question or an estimates question on notice, or an order for documents, not answered within 30 days, after a minister is asked to explain that failure under SO 74(5) and 164(3)
- (m) in relation to a committee report on a bill, when the bill is considered under SO 115(5)
- (n) for the recommittal of a bill, at the report and third reading stages under SO 121 and 123
- (o) for a document quoted by a senator to be laid upon the table under SO 168
- (p) for the printing or consideration on another day of a document which has been presented under SO 169
- (q) for the extension of time for a senator to speak, in general debate under SO 189(1)
- (r) for dissent from a ruling of the President, and that the question of dissent requires immediate determination under SO 198(1)
- (s) for the adjournment of a debate under SO 201(1)
- (t) for the closure of a debate under SO 199(1)
- (u) for the business of the day to be called on, moved during discussion of a matter of public importance under SO 75(8)
- (v) for a senator to be suspended from the sitting of the Senate, in case of disorder under SO 203(3)
- (w) in cases of urgent necessity, for the suspension of standing or other orders under SO 209(1).

A motion which otherwise requires notice may be moved by leave of the Senate, that is, unanimous consent of all senators present.<sup>5</sup>

When the Senate has directed that a report, for example, a report of the Procedure Committee, be considered on a day, so that there is an order of the day for the consideration of the report, motions may be moved without notice in relation to the report, for example, to adopt or endorse the recommendations of the report.

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5 SO 88.

Notices are statements of intention by senators that they intend to move particular motions on particular days indicated by the notices. Notices are technically not business which is before the Senate.

Notices are entered on the Notice Paper in the order in which they are given. If they are given by a minister they are placed under government business, and if given by a senator who is not a minister under general business. Other categories under which notices of motion may appear are business of the Senate and matters of privilege; special precedence is given to those notices under standing orders 58 and 81.<sup>6</sup>

The opportunity for senators to carry out the intentions stated in their notices and to move the motions of which they have given notice does not arise until the notices are reached in accordance with the rules relating to the conduct of proceedings. As explained in Chapter 8, the Senate usually has more business before it than can be dealt with in a session, and notices of motion, particularly general business notices, will not necessarily be reached in the normal course of proceedings.

The following rules apply to notices of motion:<sup>7</sup>

- a notice must not contain matters not relevant to each other
- a notice must consist of a clear and succinct proposed resolution or order of the Senate
- a notice must deal with matters within the competence of the Senate
- a notice must not contain statements, quotations or other matter not strictly necessary to make the proposed resolution or order intelligible.

The President is empowered to delete extraneous matter from notices, to divide notices containing different matters, and to require a senator giving a notice which is contrary to the standing orders to reframe the notice.<sup>8</sup>

A senator may give a notice on behalf of another senator who is not present and it is a general practice of the Senate to allow senators to take actions in the course of proceedings on behalf of other senators.<sup>9</sup>

Two or more senators may join together as joint movers of a motion, and their names are placed

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6 See also Chapter 8, Conduct of Proceedings, under Special precedence for certain business.

7 SO 76.

8 See Procedure Committee, 4th Report, 63rd Session, PP 463/1989; statement by President Sibraa, SD, 13/11/1991, p. 2999.

9 SO 76(4).

on the notice.<sup>10</sup>

A senator may give notice of a motion in general terms, provided that, at least one day before the day on which the notice is to be moved, the senator provides a written copy of the complete motion. A senator may, for example, give notice of intention to move on a future day a motion relating to the report of a committee or other body, and may provide before the day for moving the motion the terms of the motion asking the Senate to make particular decisions in relation to the report.<sup>11</sup> This procedure is not often used.

A senator may not give two notices of motion consecutively if another senator has a notice to give.<sup>12</sup> The rationale of this rule is that a senator giving a number of notices could take up a number of places in the queue of business on the Notice Paper, and thereby make it less likely that subsequent notices would be reached. For convenience, however, the chair may allow senators to give notices consecutively, on the basis that they are placed on the Notice Paper in the order in which the senators would normally have received the call.<sup>13</sup>

Because a notice of motion is simply a statement of intention by a senator and not business before the Senate, it is entirely in the control of the senator who gives the notice.<sup>14</sup> Thus a senator may change the terms of a notice before the day on which it is to be moved, may specify a later day for moving the motion, and may withdraw a notice at any time before it is moved or when it is reached in the order of business.<sup>15</sup> It follows that a senator cannot be compelled to move a motion of which the senator has given notice, and if a senator has given notice for a future day the senator cannot be compelled to move the motion earlier; this can come about only by leave.<sup>16</sup> There are precedents for motions, moved pursuant to a suspension of standing orders, to have motions of which notice was given called on and thereby debated and determined early.<sup>17</sup> This was done, however, as an agreed strategy to bring on an early debate; it could not have prevented the senators moving the motions on a later day in accordance with their notices. In 2008 a disallowance motion was brought on early by leave and then withdrawn pursuant to notice of intention under standing order 78.<sup>18</sup>

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10 SO 76(4).

11 For precedent relating to the summoning of certain witnesses: 12/6/1975, J.809.

12 SO 76(9).

13 SD, 25/11/1980, p. 9.

14 Ruling of President Givens, SD, 1/9/1916, p. 8408.

15 SO 77; but see below in relation to disallowance motions.

16 28/9/1993, J.515; 30/9/1993, J.550; 25/11/1993, J.889-90.

17 9/10/1986, J.1273; 28/2/1989, J.1392-3.

18 15/9/2008, J.833, 16/9/2008, J.848; see Chapter 15, Delegated legislation and disallowance, under Withdrawal of notice of motion.

If a senator does not move a motion when it is called on, it lapses and is removed from the Notice Paper.<sup>19</sup> A senator may postpone a notice at the appropriate time in the routine of business.<sup>20</sup> A notice not reached on the day for which it is given remains on the Notice Paper for the next day of sitting.<sup>21</sup>

The provision in standing order 77(2) for the terms of a notice to be altered by lodgment in writing on any day earlier than the day for proceeding with the motion has been used to alter the day for moving a motion. It cannot be used, however, to change the day for moving a motion to a day earlier than that originally designated. This would defeat the condition in standing order 77(1) that only a later day can be set, and would be objectionable in principle in that it would allow a motion to be brought on earlier without senators being aware, except by looking at the Notice Paper for the day, that the motion is to be moved. On this basis a request by a senator to designate by letter an earlier day for moving a motion is not effective.

An alteration of a notice of motion under standing order 77(2) may be used to divide a notice into two or more notices, provided that the original notice contains a motion which could be divided under standing order 84(3) and the effect of the division is not to give notice of a distinctly new motion. This was done on 28 October 1997, when a government business notice of a motion to exempt a list of bills from the operation of standing order 111(5) was divided to distribute the bills on the list over 3 notices. Similarly, a notification under standing order 77(2) may be used to combine two or more notices into one, provided that they deal with related matters and a new notice is not sought to be introduced by that means. Notices in different categories of business, such as business of the Senate and general business, could not be combined by that means.

Special procedures apply to the withdrawal of notices of motion for the disallowance of delegated legislation. Various statutory provisions provide that, for delegated legislation to be validly disallowed by the Senate, the notice of motion for disallowance must be given within a statutorily-specified period after the legislation is laid before the Senate.<sup>22</sup> If a senator were to give notice of motion for the disallowance of an instrument of delegated legislation and then withdraw the notice after the expiration of the statutory period for giving notice, another senator who wished to move for the disallowance of the delegated legislation could not do so by giving a fresh notice. Standing order 78 therefore provides that a senator who has given notice of a disallowance motion may not withdraw it until an opportunity has been provided for any other senator to take over the notice.<sup>23</sup>

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19 SO 83(2), but see below and Chapter 15, Delegated Legislation, for the special case of a disallowance motion.

20 SO 67.

21 SO 80(2).

22 See Chapter 15, Delegated Legislation.

23 For precedents, see Chapter 15, Delegated legislation and disallowance, under Withdrawal of notice of motion.

It was ruled in 1982<sup>24</sup> that a senator could not give notice of a motion in the same terms as a notice already on the Notice Paper. This ruling was not correct and has not since been followed. There is nothing in the standing orders to prevent senators giving identical notices of motion. The ruling seems to have been based on an analogy with the anticipation rule (see below), but that rule clearly does not apply to notices. If the ruling were followed a senator could give notice of a motion with no intention of ever moving it, for the purpose of preventing, or attempting to prevent, a matter coming before the Senate.

## Contingent notices

Senators may give contingent notices of motion, that is, notices that particular motions will be moved contingent upon some event occurring in the course of proceedings of the Senate or some stage in the proceedings being reached.

Most contingent notices of motion are to the effect that, contingent on a certain stage in proceedings being reached, a senator will move the suspension of standing orders to enable the moving of a subsequent motion to rearrange the business of the Senate or to have some new item of business considered.<sup>25</sup> These contingent notices are designed to overcome the requirement that a motion to suspend standing orders moved without notice must be supported by an absolute majority of senators to be carried.<sup>26</sup> By giving contingent notices, senators are able to have motions for the suspension of standing orders carried by a simple majority of senators present.

A contingent notice of motion does not allow a senator to move any motion which the senator would not otherwise be entitled to move under the standing orders. A senator could not, for example, give notice that, contingent on government business being called on, the senator would move a particular motion. The senator would not be able to move such a motion regardless of the contingent notice, because business must be called on in the order prescribed by the standing orders, and a senator is not entitled to move a motion out of that order, particularly a general business motion in the time for government business. This explains why most contingent notices of motion are for the suspension of standing orders, because it is only by the suspension of standing orders that a senator can move any motion or bring on for consideration any matter which has not been reached in the prescribed order of business.

Sometimes, however, contingent notices are given as an indication that, contingent on the stated event or stage in the proceedings occurring, the senators giving the notices will move motions or amendments which they are in any case entitled to move without notice under the standing

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24 21/4/1982, J.853-4.

25 See Chapter 8 under Suspension of standing orders.

26 SO 209.

orders. For example, contingent notice is sometimes given of amendments to motions or to bills; as explained under Amendments, below, senators are entitled to move amendments without notice, but may give notice of amendments as an indication of their intentions.<sup>27</sup>

On 18 September 2002 a senator moved a motion for a reference to a standing committee, the notice of the motion being expressed to be contingent on an order for documents not being fully complied with by a specified date. As the motion was a business of the Senate item, it took precedence over government business and therefore could be moved in the time for government business (other than in the three government business only times.<sup>28</sup> The contingent character of the notice did not give the motion any precedence to which it was not otherwise entitled.<sup>29</sup>

Standing order 115(2) provides that a motion for an instruction to the committee of the whole on a bill may be moved after the second reading of the bill, provided that notice of the instruction has been given. Such a notice is expressed to be contingent on a bill being read a second time.

Contingent notices are usually expressed to operate on any future day, so that they do not have to be given afresh each day.

## **Formal motions**

An opportunity is provided in the routine of business of the Senate for motions of which notice has been given to be put and determined without debate or amendment, provided that no senator present objects to that course. When notice of a motion has been given for a particular day, at the time provided on that day a senator may ask that the motion be taken as formal. If no senator present objects, the motion is then moved, put and determined without debate or amendment. This process is called “discovery of formal business”. This procedure provides a means whereby senators may seek to have their motions determined without waiting for the notice of the motions to be reached in the normal course of proceedings, subject to the concurrence of all senators present, and at the price of forgoing debate on, and the amendment of, the motion.

A motion may be divided under standing order 84(3) and one part of it determined as a formal motion.<sup>30</sup>

While most motions taken as formal are uncontroversial and are agreed to, some are negated

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27 24/10/1974, J.287; 27/10/1982, J.1166-7; 8/12/1982, J.1286; 4/12/1985, J.692; 12/2/2008, J.17; 18/3/2009, J.1768-9; 23/6/2011, J.1095; 4/7/2011, J.1136.

28 See Chapter 8, Conduct of Proceedings, under Government and general business.

29 18/9/2002, J.760.

30 28/5/1996, J.241-2.

and some are taken to a division.<sup>31</sup>

## Determination of motions

When a motion has been duly moved, in accordance with a notice if notice is required, and accepted by the chair as a motion conforming with the rules of the Senate, the senator moving the motion may speak to it and debate may ensue in accordance with the rules relating to the conduct of debate. Senators may move amendments to the motion,<sup>32</sup> and those amendments may be debated in accordance with those rules. At the conclusion of the debate, the chair puts the questions for any amendments to be agreed to and then for the motion, as amended if amendments have been made, to be agreed to, and the Senate votes on the motion.

A senator may move a motion on behalf of another senator. A motion not moved when called on lapses and is removed from the Notice Paper. Once moved, a motion is in the possession of the Senate, and cannot be withdrawn without leave.<sup>33</sup>

A motion need not be seconded when moved, the procedure of seconding having been abolished in 1981.<sup>34</sup>

The chair may divide a complicated motion into two or more parts.<sup>35</sup>

## Avoidance of question

There are several procedures by which the proceedings on a motion may not be concluded, so that the motion remains unresolved, at least at that stage. Some of these are procedures whereby the Senate may deliberately avoid making a determination on a motion.

The Senate may avoid making a decision in relation to a motion by the following means listed in SO 89:

- the adjournment of the debate on the motion
- the adjournment of the Senate

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31 For consideration of the use of the formal motions procedure, see SD, 27/3/2003, pp. 10334-8; 30/10/2003, pp. 17222-8; Procedure Committee, 1st Report of 2004, PP 82/2004; 2nd report of 2011, PP 158/2011; statement by President Hogg, SD, 7/7/2011, p.26.

32 See under Amendments, below.

33 SO 83.

34 See *Annotated Standing Orders of the Australian Senate*, under SO 84.

35 SO 84(3); see Chapter 10, Debate, under Dividing the question.

- a motion for the orders of the day to be called on
- the moving of the previous question.

In the course of debate on a motion, a senator who has not spoken in the debate or previously moved the adjournment, or a minister who has spoken or previously so moved, may move that the debate be adjourned. That question must be put and determined without debate or amendment. When debate is adjourned the resumption of the debate is an order of the day for the next day of sitting, unless some other time is fixed for the resumption.<sup>36</sup> Debate on a motion may be adjourned as a means of avoiding the determination of the motion.

The adjournment of the Senate leaves unresolved any motion not then determined. The adjournment of the Senate may be moved only by a minister and cannot be moved so as to interrupt a senator speaking, so that debate on a motion must be adjourned before the adjournment of the Senate can be moved.<sup>37</sup> The motion for the adjournment of the Senate is therefore not a procedure which can be readily used deliberately to avoid the determination of a motion.

During debate on a motion, a senator may move that the orders of the day be called on, and that question is put without amendment or debate. This motion, which is now not used in the Senate, may be moved only during the consideration of motions which have been first moved on the day concerned. It cannot be moved when the Senate is considering a motion which has been called on as an order of the day, because the Senate is already considering orders of the day and a motion that the orders of the day be called on would be meaningless. This motion therefore has limited use as a means of avoiding the determination of a motion.

The previous question is provided for in standing orders 94 and 95. During debate on a motion a senator may move, but not so as to interrupt a senator speaking, that this question be not now put. The previous question cannot be moved to an amendment. It is debatable. If it is passed, this disposes of the motion before the Senate, and the Senate proceeds to the next business. If it is not passed, the Senate, in effect, has resolved that the question should be put immediately, and the motion and any amendment are then put and determined without further debate. The previous question can be used to avoid coming to a determination on a motion, but if it is not agreed to it has the effect of requiring that the motion be determined without further debate. Thus a senator wishing to avoid a vote on a question should not move the previous question unless certain of the Senate's agreement, because the motion may have the opposite of the intended effect. The previous question is seldom used in the Senate. As it is debatable, it is less effective than the motion for the adjournment of the debate.

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36 SO 201.

37 See Chapter 7.

A motion which has been superseded by these procedures or withdrawn may be moved again.<sup>38</sup>

In committee of the whole a question may be avoided by the motion that the Chair of Committees report progress.<sup>39</sup>

If debate on a motion is subject to a total time limit, a decision can be avoided by continuing the debate until the allotted time expires. This is referred to as “talking out” a motion. It may occur, for example, during the limited time available for general business.

### **Rescission of resolutions and orders**

A resolution or order of the Senate may be rescinded only if seven days’ notice is given of the rescission motion and if the motion is carried by an absolute majority of senators.<sup>40</sup>

A rescission properly so called has the retrospective effect of annulling or quashing a decision from the time that decision was made as if it had never been made. Rescission motions are therefore rare: it is seldom the intention to achieve that effect.

It is not necessary to rescind a resolution or order if the intention is simply to cease the operation of the resolution or order prospectively; this can be done by a new resolution or order and does not require a rescission motion.

The Senate and committees frequently make decisions which reverse or modify previous decisions with prospective effect. Such amending decisions are not treated as rescissions or as in any way different from other decisions which have a prospective effect. For example, the Senate may agree to an order that it meet on a particular day but subsequently alter the times of its meetings so that it does not meet on that day. This is not regarded as a rescission of the original decision, but simply as an amendment or modification of it with effect for the future. Similarly, a committee which has agreed to part of a draft report may decide to reconsider that part without rescinding its original agreement to it. Many decisions of this character are frequently made. At one time it was thought that the presence in an order of the words “unless otherwise ordered” was vital to the ability to change a decision in this way, but decisions have been altered regardless of the absence or presence of those words, and they are not now usually used in orders of the Senate.

In the distant past procedural difficulties ensued when rescission was thought, mistakenly, to be necessary. Rescission motions were occasionally used, instead of a suspension of standing orders,

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38 SO 83(4), but subject to the anticipation and same question rules, see below.

39 See Chapter 14, Committee of the Whole Proceedings.

40 SO 87.

to circumvent the rule against considering a proposal the same as one already determined.<sup>41</sup>

Under section 48 of the *Legislative Instruments Act 2003*, an instrument that has been disallowed by a House of the Parliament may not be remade within six months of the disallowance unless the disallowing House has rescinded its resolution of disallowance. Motions for the purposes of the equivalent provision in the past were regarded as rescission motions within the meaning of standing order 87, and therefore as requiring seven days' notice and an absolute majority. As such a motion, however, in effect gives permission for the remaking of a disallowed instrument and therefore has only a prospective effect, it is not technically a rescission motion and is now not subject to those requirements.<sup>42</sup>

## **Privilege motions**

Motions to refer matters of privilege to the Privileges Committee and relating to contempts of the Senate are subject to special requirements.<sup>43</sup> A matter of privilege cannot be moved unless it has first been advised in writing to the President, and does not have precedence unless the President has so determined. A motion to determine that a person has committed a contempt or to impose a penalty for a contempt requires seven days' notice.<sup>44</sup>

## **Same question rule**

A motion may not be moved if it is the same in substance as a motion which has been determined during the same session, unless the latter was determined more than six months previously.<sup>45</sup> An exception is made for motions for disallowance of delegated legislation the same in substance as legislation previously disallowed. This exception was inserted in case of the remaking of disallowed delegated legislation; it is complemented by the statutory provision which is referred to under Rescission of resolutions and orders, above.

This rule, known as the same question rule, is seldom applied, because it seldom occurs that a motion is exactly the same as a motion moved previously. A motion moved in a different context, for example, as part of a different "package" of proposals, is not the same motion even if identical in terms to one already moved.<sup>46</sup> Even if the terms of a motion are the same as one previously determined, because of lapse of time it almost invariably has a different effect because of changed

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41 See Same question rule, below.

42 13/5/2004, J.3415; 26/11/2010, J.468-9.

43 SO 81, 82.

44 See Chapter 2, Parliamentary Privilege, under Raising of matters of privilege.

45 SO 86.

46 SD, 8/11/2000, pp. 19358-9.

circumstances and therefore is not the same motion. There may also be different grounds for moving the same motion again.

This consideration arises particularly in relation to delegated legislation. A senator may move to disallow an instrument of delegated legislation on policy grounds, and the Regulations and Ordinances Committee may give notice of a motion to disallow the same instrument on grounds related to the committee's criteria of scrutiny; the two motions are regarded as entirely separate, and the determination of one does not affect the other. Moreover, it could be argued that the same question rule could not prevent the operation of the relevant statutory provisions, which provide for disallowance subject only to the statutory time limit. Therefore any disallowance motion may operate (and operate automatically if not withdrawn or determined) provided only that notice of it is given within the statutory time.<sup>47</sup>

### **Anticipation rule**

A motion or amendment may not anticipate an order of the day or another motion of which notice has been given, unless the new motion or amendment is a more effective method of proceeding.<sup>48</sup>

This rule is seldom applied, and it is interpreted liberally. As the Senate now normally has a large number of notices of motion and orders of the day on its Notice Paper, virtually any motion could be regarded as anticipatory of some item of business before the Senate, and the rule if applied strictly would be unduly restrictive of the rights of senators. The proviso relating to a more effective method of proceeding is also interpreted as having a wide application. Thus in 1967 the President ruled that an amendment, moved to a motion to take note of a ministerial statement, requiring that certain documents be laid before the Senate, was in order notwithstanding that there was on the Notice Paper a notice of motion for the tabling of the same documents.<sup>49</sup>

### **Amendments**

A motion which has been duly moved and has become a question before the Senate may be the subject of an amendment, which may be moved without notice, except where the standing orders provide that particular motions are not open to amendment.

The following motions are not open to amendment:

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47 See Chapter 15, Delegated Legislation; for precedents of two disallowance motions identical in terms: 8/12/1993, J.940; 3/2/1994, J.1190; 29/5/1997, J.2030.

48 SO 85.

49 Ruling of President McMullin, SD, 5/10/1967, pp.1254-8.

- (a) for the adjournment of the Senate under SO 53(3)
- (b) formal motions under SO 66
- (c) to determine the postponement of business for which the senator in charge has lodged a postponement notification under SO 67
- (d) for the first reading of bills, except bills which the Senate may not amend under SO 112(1)
- (e) for a bill to be considered an urgent bill under SO 142(1)
- (f) for the chair to report progress and ask leave for the committee of the whole to sit again under SO 144(6)
- (g) that an objection to a ruling by the chair requires immediate determination under SO 198(2)
- (h) for an extension of time for a senator to speak under SO 189(1)
- (i) for a debate to be adjourned under SO 201(2)
- (j) for the closure of a debate under SO 199(1)
- (k) for a senator to be suspended from the sitting of the Senate, in case of disorder under SO 203(3)
- (l) urgency motions under SO 75(6)
- (m) for the business of the day to be called on, moved during discussion of a matter of public importance under SO 75(8).

Some of these standing orders provide only that motions are not debatable, but such non-debatable motions also cannot be amended, because senators cannot receive the call to move amendments to them. The standing orders may provide explicit exceptions to this principle.<sup>50</sup>

There are three kinds of amendments:

- to leave out words of the motion
- to leave out words in order to substitute other words
- to insert or add words.

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50 For example, under SO 24A(7), an amendment may be moved to a motion to adopt a report of the Selection of Bills Committee even when the time for debate on the motion has expired.

The mover of an amendment must submit it in writing and sign it.<sup>51</sup> Normally copies of amendments are circulated in the Senate chamber. These rules are not enforced where an amendment is simple and easily understood.<sup>52</sup>

Although not required to do so, senators occasionally give notice of amendments, to alert other senators of the content of amendments to be moved.<sup>53</sup>

An amendment must be relevant to the motion to which it is moved.<sup>54</sup> This requirement is interpreted liberally so as not to restrict unduly the rights of senators. If an amendment relates to the subject matter of a motion or to a closely related subject matter it is accepted.

An amendment may not be moved if it is a direct negative to the question.<sup>55</sup> An amendment is not regarded as a direct negative unless it would have exactly the same effect as negating the motion.<sup>56</sup>

An amendment may not be moved if it is the same in substance as an amendment already determined to the same question, or would have the effect only of reversing an amendment already made.<sup>57</sup> This rule prevents issues already decided being canvassed again by means of amendments. An amendment is accepted, however, if its effect is in any way different from one which has already been determined. An amendment moved in a different context, for example, as part of a different “package” of proposals, is not the same amendment even if identical in terms to one already moved.<sup>58</sup>

A senator who has moved a motion or who has spoken in the debate on it may not move an amendment, and a senator may not move more than one amendment to a motion.<sup>59</sup> Either of those actions would involve a senator receiving the call more than once in relation to a motion. These rules do not apply in committee of the whole, however, where a senator may speak more than once on any question.<sup>60</sup>

When an amendment to a motion has been proposed, it must be disposed of before another

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51 SO 90(2).

52 Ruling of President Turley, SD, 4/12/1912, p. 6329.

53 12/2/2008, J. 17; Notice Paper 13/2/2008, p. 3.

54 SO 90(3).

55 Rulings of President Baker, SD, 17/11/1904, p. 7072, 19/10/1905, p. 3757.

56 Ruling of acting Deputy President Wood, SD, 14/8/1968, p. 68.

57 SO 92.

58 SD, 8/11/2000, pp. 19358-9; 18/8/2003, p. 13832.

59 SO 90(4).

60 See Chapter 10, Debate, under Right to speak, and Chapter 14, Committee of the Whole Proceedings, under Right to speak and Time limits.

amendment may be moved.<sup>61</sup> So that the rights of senators are not unduly restricted, by long-established practice a senator who speaks in a debate after an amendment has been moved and who wishes to move another amendment may foreshadow the further amendment and move it when the original amendment is determined.

As with an original motion, an amendment once moved is in the possession of the Senate and may not be withdrawn except by leave.<sup>62</sup>

Where a motion is the subject of an amendment, at the conclusion of the debate the President puts the question that the amendment be agreed to, and then the question that the motion (as amended, if the amendment has been passed) be agreed to.

An amendment may be moved to a proposed amendment as if the proposed amendment were the original question. The procedure of moving an amendment to an amendment is used where, for example, a senator wishes to agree to words which are proposed to be inserted or added to a motion but wishes to modify them. Where an amendment to an amendment is moved, the chair first puts the amendment to the amendment, then the amendment (as amended if the amendment to the amendment is agreed to), and finally the original motion (as amended if any amendment has been agreed to). This procedure ensures that the motion which finally emerges, if it is passed, has the support of a majority of senators present and voting, and that a senator is not compelled to vote on a motion until there has been opportunity to put it into a form with which the senator could be in complete agreement.

As an alternative to the moving of an amendment, a senator, usually the mover of a motion, may amend a motion by leave before it is put.

Where the Senate has before it a resolution of the House of Representatives to which the Senate's agreement is sought, the Senate cannot amend the resolution, and therefore may agree to the resolution subject to specified amendments or modifications.

## **Duration of resolutions and orders**

A resolution or order of the Senate is regarded as continuing in effect unless its terms indicate that it has a limited life, or it is spent by the effluxion of time or the circumstances to which it applied no longer exist. Thus the standing orders of the Senate adopted in 1903 continued in effect until they were replaced in 1989. The Privilege Resolutions of 25 February 1988 continue to apply to privilege matters, as do various procedural orders of the Senate. On 13 February 1991,

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61 SO 91(2).

62 SO 91(3).

after some debate about whether various resolutions and orders of the Senate should be regarded as having continuing effect, the Senate, on the recommendation of the Procedure Committee, adopted a resolution indicating that it would add a form of words to future resolutions and orders to indicate that they are intended to have continuing effect. This decision, however, has not been consistently followed.

## Urgency motions and matters of public importance

Standing order 75 provides a procedure whereby a senator can raise for debate, without the usual notice of not less than one day, any matter which is regarded by five or more senators as warranting immediate debate.

A senator has a choice of proposing that a matter of public importance be submitted to the Senate for discussion, in which case the matter may be debated without any question being put to a vote, or moving a motion that in the opinion of the Senate a specified matter is a matter of urgency. A proposal under the standing order is made by delivering in writing to the President not later than 12.30 pm on a sitting day a statement of the proposed matter of public importance or urgency. Proposals are not received until 8.30 am each sitting day.

If more than one proposal is submitted on any day the proposal first provided to the President is reported, and if two or more proposals are presented simultaneously the proposal to be reported is determined by lot.

A proposal under standing order 75 may be signed by more than one senator, in which case any of the joint proposers may move the motion of urgency or speak first to the matter of public importance.<sup>63</sup>

If a proposal is in order the President reads it to the Senate at the time provided in the routine of business, and, if four senators, not including the proposer, by rising in their places, indicate their support of the proposal, the debate proceeds.<sup>64</sup>

A senator who has submitted a proposal may withdraw it when it is read to the Senate or prior to that time.<sup>65</sup> Although the situation has not arisen, the question arises of what would happen if a proposal selected by lot were withdrawn before being reported. The likely solution, and the one which best preserves the rights of senators, is that the proposer of the unsuccessful matter should

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63 SO 93; 8/4/1970, J.51; 2/5/1973, J.137; 26/11/1991, J.1734-5.

64 For a proposal read again by leave when not supported on the first occasion, see 17/2/1999, J.467.

65 19/2/1975, J.526; 14/2/1991, J.746; 8/3/1995, J.3048; 28/10/1996, J.765; 24/3/1999, J.613; 31/8/1999, J.1608.

be given the opportunity to indicate whether they wished to proceed that day.

Special time limits apply to the debate. There is a total time limit of 90 minutes, or 60 minutes if motions to take note of answers are moved after question time, and a speaking time limit of 10 minutes for each speaker. The time allowed does not commence until the debate actually starts. If the debate proceeds by way of an urgency motion, at the expiration of the time, or if the debate is interrupted by other business taken at a fixed time, the question on the motion is put.

Except as otherwise provided in standing order 75, urgency motions and matters of public importance are subject to the normal rules relating to motions and debate. The mover of an urgency motion may speak in reply if time permits.

Rulings have been made that a proposed urgency motion or matter of public importance must relate to a matter of Commonwealth ministerial responsibility, but proposals are accepted if there is any element of such responsibility in the matter in question.<sup>66</sup> The rationale of such rulings is that the procedure under standing order 75 gives special precedence to a discussion over all other business at the relevant time, not by majority decision but at the request of five senators. The procedure should not therefore be used to debate matters merely of interest to senators, when there are other opportunities without precedence, such as the adjournment debate, to discuss such matters.

An urgency motion may not be amended. This rule is sometimes circumvented by the suspension of the standing order to allow an amendment to be moved, and senators usually place on the Notice Paper contingent notices of motion to allow them to move motions to suspend standing orders to allow amendments to be moved to urgency motions.<sup>67</sup> When an amendment has been moved by these means, it is in order to move amendments to the amendment. A suspension of standing orders to authorise an amendment to an urgency motion would not authorise an amendment not relevant to the subject of the motion. If an urgency motion is amended pursuant to a suspension of standing orders, the motion as amended must be put.<sup>68</sup> Amendments are sometimes moved to urgency motions by leave.<sup>69</sup>

The procedure in standing order 75 is designed to allow debate on a matter without the Senate making a decision on a substantive question. In voting on an urgency motion the Senate does not give its decision on a substantive motion, but simply indicates whether in its opinion the matter raised is a matter of urgency. The vote is often regarded, however, as a vote on the matter

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66 Ruling of President McMullin, 5/3/1969, J.399.

67 See Chapter 8, Conduct of Proceedings, under Suspension of standing orders.

68 Ruling of Deputy President, 9/4/1991, J.888.

69 30/3/2004, J.3273-6.

itself. A motion may therefore be cast in terms which make it difficult for a party to vote either for or against a motion. For example, if the motion is to declare that the level of unemployment is a matter of urgency, a vote on the motion is regarded as a test of the Senate's attitude to the level of unemployment. If the party supporting the ministry votes against the motion this may be regarded as an expression of indifference on unemployment, but if the party votes for the motion this may be regarded as a confession of ministerial failure. It is because of this potential of an urgency motion to embarrass a party that the rule against amendment is often circumvented.

An urgency motion may not be divided.<sup>70</sup> This ruling was based partly on the prohibition of amendment of an urgency motion.

It is not in order for an urgency motion to be framed so as to build a substantive motion into the statement of the matter of urgency.<sup>71</sup>

The closure (that is, the motion that the question be now put) may be moved during debate on an urgency motion.<sup>72</sup> The standing order provides a means whereby discussion on a matter of public importance may be terminated. At any time during the debate, but not so as to interrupt a senator speaking, a senator may move that the business of the day be called on. This question is immediately put without debate or amendment, and if it is agreed to, the matter of public importance is disposed of and the Senate proceeds with its business.

There are precedents for debate on an urgency motion being adjourned till a later hour of the day.<sup>73</sup> It is not clear how it was determined in these cases which items of business could be transacted before the adjourned debate was called on, or when it was to be called on; presumably this was done by agreement.<sup>74</sup> The precedents have not been followed. The terms of standing order 75 clearly prevent adjournment of a debate till a subsequent day, and if a debate adjourned till a later hour were not called on or concluded before the Senate adjourned it would lapse.<sup>75</sup>

Similarly, an urgency motion or matter of public importance lapses if it is not reached on a day or is superseded by business which is called on at a fixed time.<sup>76</sup> Where debate is interrupted by order for some business of limited duration (such as a senator's first speech), however, the debate

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70 Ruling of President McClelland, 18/9/1985, J.468.

71 See report of Standing Orders Committee, 17 August 1971, PP 111/1971, p. 2.

72 See Chapter 10, Debate, under Closure of debate.

73 30/8/1956, J.135; 13/9/1961, J.107; 27/9/1972, J.1137, 1141.

74 See Chapter 8, Conduct of Proceedings, under Resumption of postponed and adjourned business.

75 20/5/1969, J.469.

76 23/3/1995, J.3134; a matter of public importance was lodged but not reached on 11/5/1995.

is resumed if time permits.<sup>77</sup>

On 23 October 1997, during debate on an urgency motion, a motion for suspension of standing orders to allow an amendment to be moved to the motion was moved and debated, and debate on the suspension motion had not concluded when the time for the main debate expired. The motion for suspension of standing orders was then taken to have lapsed and the question on the urgency motion was put in accordance with standing order 75. The rationale for this is that the motion for suspension of standing orders is not related in any substantive way to the actual question before the Senate, but is a procedural motion designed to allow, but not to require, the moving of an amendment, which would be substantively related to the question before the Senate. Even if the suspension motion had been passed just before the time expired, its effect would have been merely to allow the moving of an amendment, not to require an amendment to be moved, and it would be anomalous to allow an amendment to be moved after the time had expired. If the suspension motion had been successful and an amendment had been moved before the time expired for the debate, at the expiration of the time the amendment would have been put and then the main question, because the amendment then would have been part of the substantive matter before the Senate for determination.

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<sup>77</sup> 21/8/2002, J.629; 22/8/2011, J.1326.