

Procedural Information Bulletin No. 2

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INTRODUCTION

The proceedings of the first six sitting days of the new session contained a number of unusual procedural occurrences.

THE NUCLEAR SHIPS DEBATE

On Monday 25 February Senator Chipp, using a contingent notice of motion which he had placed on the Notice Paper on the first sitting day, successfully moved a motion to suspend the Standing Orders to allow him to move a further motion to rearrange the order of consideration of the business on the Notice Paper. (The contingent notice avoids the need to gain an absolute majority for the suspension of Standing Orders: Standing Order 448). His rearrangement motion, which was successful also, was to give precedence over all other business to his Australian Waters (Nuclear Powered Ships and Nuclear Weapons Prohibition) Bill 1984, which had been restored to the Notice Paper (see the section below on Restoration of Bills). The motion was unusual in that it gave precedence to the order of the day relating to the bill "until consideration of that Bill is concluded", so that the precedence continued to operate from day to day. When debate on the bill was not concluded on Monday, it was duly called on before all other business on the Notice Paper on Tuesday.

The Opposition moved an amendment to the motion for the second reading of the bill (the motion "That this Bill be now read a second time") to leave out all the words after "That" and to insert words containing an expression of opinion on the subject matter of the bill. Such amendments are common; their effect is that the Senate declines to grant a second reading to the bill in question, and instead makes a resolution expressing an opinion, thereby ending proceedings on the bill without negating the motion for the second reading. In accordance with past rulings, and upon a point of order being taken, the Chair ruled that the amendment did not violate the rule that an amendment may not be a direct negative of the original question.

The Government had its own words to insert in substitution for the motion for the second reading of the bill, and wished to move an amendment to put those words in the place of the words which Senator Chaney proposed to insert in the motion. The Government amendment to Senator Chaney's amendment could not be moved until the first question involved in Senator Chaney's amendment, that the words proposed to be left out be left out, had been determined, because of the rule contained in Standing Order 149:

When it is proposed to leave out words in the Original Question in order to insert or add others, no Amendment to the words proposed to be inserted or added can be entertained until the Question that the words proposed to be left out be left out has been determined.

The rationale of this rule is that before the Senate is asked to vote on any words proposed to be inserted, it ought to be given the opportunity to determine whether it wishes to leave out the words proposed to be left out in the original motion. If the Senate votes not to leave out the words in the original motion, that disposes of all proposals to insert different words.

A majority, consisting of the Opposition and Government senators, voted to leave out the words in the original motion, thereby providing the opportunity for other words to be inserted. The Government amendment to Senator Chaney's amendment, to change the words to be inserted, was then put and lost on the vote of the Opposition and the Democrats. The second question involved in Senator Chaney's amendment, that the words proposed to be inserted be inserted, was then put and lost, the Government and the Democrats voting against the words desired by the Opposition. This meant that all that was left of the original motion was the word "That", which the President declined to put.

This is not the first occasion on which this has occurred in the Senate (see Odgers, p. 272). It comes about when the majority of the Senate wishes to change the words of a motion but there is not a majority for any of the proposals to substitute other words.

Anyone who relied upon the press reports to understand the proceedings would have been grievously misled. A number of newspaper articles contained what was presumably the consensus of the press gallery as to the meaning of the proceedings. The journalists were under the impression that the Senate was voting on amendments to the text of the bill, and that the word "That" was all that was left of the bill. A cursory glance at the amendments or the bill itself, or a question directed to any Senate procedural officer, could have dispelled this illusion, but such methods of inquiry regrettably are not common.

Tuesday's proceedings were not the end of the matter. The Opposition on Wednesday embodied its views in a motion of urgency which, under Standing Order 64, is not subject to amendment. Such a motion, is, however, subject to a time limit, and when that limit is reached the Senate proceeds to the next business, which allows a motion to be "talked out". When the time was up, the Opposition moved a motion that so much of the Standing Orders be suspended as would prevent the question on the motion of urgency being put forthwith. This motion was agreed to without division, no senator voting to avoid a vote on the urgency motion. The motion of urgency was then put and carried with only the Democrats voting against it.

RESTORATION OF BILLS TO THE NOTICE PAPER

The Opposition and the Democrats successfully moved motions to restore a number of bills to the Notice Paper, so that consideration of each bill would be resumed at the stage it had reached in the last session. The motions for the restoration had to contain a suspension of Standing Orders, because Standing Order 243 allows the restoration of bills only if there has been no periodical election for the Senate or general election for either House between the two sessions. This type of motion was first used in 1983. The motions for the second reading of some of the bills had been debated, and senators who had spoken to the second reading in the previous session could not speak again when consideration of those bills was resumed. In the case of one bill the senator who had been speaking when the debate was interrupted in the previous session exercised her right to the call and resumed her speech, using the balance of her speaking time. Senator Chipp's nuclear ships bill had been debated in the previous session, but senators who had spoken were able to speak to the Opposition amendment when it was moved (Standing Order 407).

FLAGS BILL

A private senator's bill introduced by Senator Durack to amend the Flags Act, so that the national flag may not be altered without a referendum, passed all stages on Thursday 28 February. It was one of the bills which was restored to the Notice Paper. As it has the support of all parties it is expected that it will find its way to the statute book. If so, it will be the seventh private senator's bill passed into law since 1901.

SESSIONAL ORDERS

The Sessional Orders relating to days and hours of sittings and the routine of business are identical to those of the last session, so staff will have a further opportunity to increase their familiarity with the rather complicated provisions of the Sessional Orders.

