

# DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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## **THE SENATE AND THE GENERAL ELECTION**

This issue deals with questions frequently asked about the process whereby the Parliament is prorogued and the House of Representatives is dissolved for a general election.

The Governor-General on 14 October, exercising on prime ministerial advice his power under section 5 of the Constitution, signed instruments proroguing the Parliament at 12 noon on 15 October and dissolving the House of Representatives at 12 noon on 17 October. This dual process of prorogation and dissolution triggers the constitutional and statutory provisions relating to a general election.

The peculiarities of those constitutional and statutory provisions were the subject of the Occasional Note attached to Bulletin no. 216.

Before the 1993 election, the government had for many years dissolved the House of Representatives without a prorogation, and the instrument of dissolution purported to discharge senators from attendance. There is no constitutional basis for this procedure, which arose from a misunderstanding of the prorogation and dissolution process applying in the United Kingdom (see *Odgers' Australian Senate Practice*, 11<sup>th</sup> ed., p. 499, and the paper by John Vander Wyk referred to there). For the 1993 and 1996 elections the prorogation and dissolution were contained in separate instruments, with the prorogation occurring one minute before the dissolution. For the elections from 1998 to 2004 the prorogation and the dissolution were effected by one instrument, with the same time gap. For the 2007 election, two instruments were signed, with the prorogation and the dissolution occurring on different days. It is not known why this process was adopted, but it may have had to do with the government's wish to prevent the Senate meeting on 15 October in accordance with its schedule of meetings, previously determined by resolution.

The only way of avoiding the Senate meeting in accordance with its own resolution is a prorogation which takes effect before that time. There is no power in the President, or anyone

else, to dispense with the meeting on the basis that a prorogation is about to occur or about to take effect, as the Speaker purported to do with the meeting of the House of Representatives in August 2004 (see Bulletin no. 185, p. 1). Nor can the meeting be dispensed with at the request of a majority of senators under standing order 55; that procedure relates only to the setting of a new meeting. The ability of the President to delay the commencement of a meeting, or to set a new meeting in accordance with a request by the government, as has occurred in past cases, does not extend to dispensing with a meeting on the basis that the government may be about to hold an election (see Odgers, p. 148).

The prorogation is regarded as ending the sittings of the Senate until the two Houses are summoned by the Governor-General under section 5 to meet again after the general election. That meeting is by custom referred to as beginning another Parliament, although this terminology is not based on any constitutional prescription (see Bulletin no. 186, pp 1-3). Theoretically the Senate could meet alone after the prorogation and before the summons, but in order to do so it would have to resolve on this course in advance of the prorogation (see Odgers, pp 150-152, 498-505). In 1984 the government's legal advisers, while maintaining that the Senate could not meet after a prorogation, conceded that Senate committees duly empowered by the Senate could do so, and Senate committees have frequently met during an election period.

On the days on which a prorogation and a dissolution take effect, there are ceremonies in which the proclamations are read at the main entrance of Parliament House and copies are posted in front of the House of Representatives main chamber entrance. Senate officers do not conduct such ceremonies, which have no foundation in the Constitution or the standing orders of the Senate.

A prorogation, therefore, terminates the sittings of the Senate, unless the Senate makes a deliberate decision in advance to continue to meet beyond the prorogation. Most Senate committees (but not joint committees) are authorised by the Senate to continue to meet and transact business after the prorogation. Committees may therefore meet, conduct hearings, and make reports if they choose to do so. Reports which are due by a particular date under an order of the Senate should be presented to the President by the due date.

The prorogation is regarded as superseding the Senate's order for the supplementary estimates hearings in November, but the Senate may decide subsequently to reschedule or replace those hearings.

Business on the Senate *Notice Paper*, including questions on notice, remains in place until immediately before the commencement of the next Parliament, when it lapses and the *Notice Paper* begins afresh.

If senators wish to pursue questions asked prior to the prorogation which are not answered before the next meeting, it is necessary to resubmit those questions. Questions on notice lodged after the prorogation, however, do not need to be resubmitted, as they appear on the first *Notice Paper* for the next Parliament.

Estimates questions on notice are regarded as continuing and departments and agencies are advised that they should answer any such questions not answered at the time of the prorogation.

Documents which are to be presented to the Senate, such as departmental annual reports, are presented to the President and released during the prorogation period as with any other non-sitting period.

Senators have the opportunity in the next Parliament to reintroduce any bills and renew any other business which is on the *Notice Paper* at the prorogation. Senate officers are available to draft bills, amendments and other documents during the election period, and such documents may be released if senators choose to do so.

The time for giving notices of motion to disallow legislative instruments continues to run from one Parliament into the next. So, for example, for an instrument tabled on the last day of sitting before the prorogation there will still be 15 sitting days in the next Parliament to give notice of a motion to disallow it. Instruments which are the subject of unresolved disallowance motions at the prorogation are deemed to be tabled on the first sitting day of the next Parliament, so that the time for giving notice of motion to disallow them begins anew.

## **RELATED RESOURCES**

The *Dynamic Red* records proceedings in the Senate as they happen each day.

The *Senate Daily Summary* provides more detailed information on Senate proceedings, including progress of legislation, committee reports and other documents tabled and major actions by the Senate.

Like this bulletin, these documents may be reached through the Senate home page at [www.aph.gov.au/senate](http://www.aph.gov.au/senate)

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