

DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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“NEW” SENATE

The “new” Senate started operations on 26 August with the swearing in of the senators elected for the terms beginning on 1 July. The convention that the President is elected from the party holding government and the Deputy President from the largest non-government party was maintained, with the result that Senators Hogg and Ferguson exchanged places, although the Greens nominated a candidate for President and a ballot was held for that position.

ESTIMATES HEARINGS

The Senate adopted on 26 August a recommendation from the Community Affairs Committee that in future estimates hearings of the committee a cross-portfolio hearing be held on Indigenous affairs, to deal with the dispersal of expenditure and responsibility for Indigenous matters through various departments. Such cross-portfolio hearings may become a feature of future hearings. They may be used to solve the problem of the human services agencies, which are divided between two committees. The issues of climate change and water conservation raise similar problems.

COMMITTEE REFERENCES

The many reports of committees presented during the period indicate that the balance between committee inquiries into matters of public interest under references from the Senate and inquiries into bills is shifting in favour of the former. The non-government parties appear to be agreeing on references to committees, an example being a major reference on

27 August to the Rural and Regional Affairs and Transport Committee on the Murray Darling Basin and the Coorong and Lower Lakes.

ORDERS FOR DOCUMENTS

The non-government parties appear also to be reaching a measure of agreement on information to be provided to the Senate, as evidenced by motions for orders for documents, which also indicate a concern with the two great issues of climate and water.

An order passed on 27 August required the production of “urgent advice” that the Minister for Climate Change and Water had called for in June on the Coorong and Lower Lakes. In a statement on 1 September the minister indicated that the information would be contained in the government submission on the subject to the committee, and the information appeared later in the day, although it was not clear whether it satisfied the order.

Two orders were passed on 3 September for documents relating to climate change and carbon emissions, a paper said to be circulated to the business community and a report prepared in the Department of Finance and Deregulation. On the following day, when the documents were due to be produced, a ministerial statement was made indicating that the government was “considering its position”. This led to a debate in which it was predicted that the government would refuse to produce the documents without good reason. It was stated that the documents are known to exist and their content is also widely known.

The current government is at least following the practice of responding to orders.

COMMITTEE INQUIRIES AND STATE GOVERNMENTS

A reference to the Economics Committee on 28 August on the gas explosion in Western Australia requires the committee to “call for” documents in the possession of the Western Australian government. This phrase is interpreted as meaning that the committee will request the state government to produce the documents; as a matter of comity between federal and state governments, Senate committees do not attempt to subpoena or summon evidence from state governments (see *Odgers’ Australian Senate Practice*, 11th ed., pp 58-9, and Supplement).

LEGISLATION

The first piece of government legislation rejected outright by the “new” Senate was the National Health Amendment (Pharmaceutical and Other Benefits – Cost Recovery) Bill 2008 on 28 August. The situation in relation to the legislation was complicated by the fact that the Community Affairs Committee, in reporting on the bill, had expressed a wish that regulations under the legislation be made available. Draft regulations were sent to the committee after the

committee reported. On 4 September the government produced the draft regulations in the Senate and had them referred to the committee, leading to criticism that this action had been taken too late.

The package of bills to increase the tax on luxury cars was rejected on 4 September. The vote on the bills had miscarried on the previous day when an Opposition senator failed to appear for the vote, and, in accordance with long-standing practice, the vote was taken again by leave.

The government later in the day gave notice of a motion for the second reading of the bills to be put again in the next round of sittings, with the opportunity of another second reading debate.

LOBBYISTS AND PARLIAMENT

The Finance and Public Administration Committee presented its report on 3 September on the government's scheme for a register of lobbyists. The committee recommended against the extension of the scheme to members of the Parliament other than ministers, because of the difficulties that would arise from any such extension. Those difficulties were set out in a submission to the committee by the Clerk.

PARLIAMENTARY PRIVILEGE: DOCUMENTS INCORPORATED

The President, in a statement on 28 August, took the opportunity to correct a common misconception about parliamentary privilege. An Opposition senator had stated that he refused leave for a document to be incorporated in Hansard because this would give the document privilege. The President pointed out that, if the Senate agrees to the publication of a document, by incorporation in Hansard or otherwise, that particular publication of the document is protected by parliamentary privilege, but this does not extend that protection to the prior composition of the document, its content or any prior publication. Its composition and content would be protected only if it were prepared for the purpose of submission to a House or a committee.

QUESTIONS TO CHAIRS OF COMMITTEES

Similarly, the President sought to correct confusion about questions to chairs of committees. Standing order 72, which provides for questions, in addition to questions to ministers allows questions to other senators about business of which they have charge on the Notice Paper and questions to chairs of committees, but the latter are required to be on notice or by leave. On 27 August an Opposition senator attempted without leave to ask a question of a chair of a committee, apparently under the impression that it could be asked under the provision about questions to senators on items on the Notice Paper. The President pointed out, at the time

and in a statement on the next day, that the provision about questions to chairs of committees is a separate provision and such questions cannot be asked except on notice or with leave.

The two provisions are seldom used for their intended purpose, and it is questionable whether they should be retained.

UNPROCLAIMED LEGISLATION

The list of unproclaimed legislation tabled on 26 August indicated that the problem of unreasonable delay or failure in proclaiming legislation has largely been overcome. Apart from a hard core of old statutes which have never been brought into effect because they depend on such things as the conclusion of international agreements, most of the unproclaimed bills are new and await the making of regulations or other administrative action.

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

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