

DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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LEGISLATION

The resolution of 14 May referring budget-related bills to committees before their introduction contained unusual provisions allowing the Selection of Bills Committee to vary the reference of bills by means of reports presented to the President. This is the only occasion on which the Senate has delegated to that committee the power to refer a bill to a committee, as distinct from making a recommendation to do so. Two reports of the committee presented out of sittings were tabled on 15 June, and one was subject to a successful amendment to transfer a bill from one committee to another, even though the inquiry had already been commenced by the committee to which it was first referred.

Much attention was given to whether the government's Carbon Pollution Reduction Scheme (CPRS) legislation would be dealt with during the period as the government wished. An Opposition attempt to rearrange government business to provide that a collection of bills, said by the government to be urgent, would be considered before the CPRS bills was rejected on 22 June. Another Opposition move, to put off the bills until after the UN conference on climate change, was rejected on 23 June. Eventually a strategy for dealing with the bills was negotiated between the non-government parties. A motion was successfully moved on 23 June for other bills to be given precedence over the CPRS bills, and on 25 June a motion moved by Senator Xenophon was passed without division to require that the CPRS bills will be finally dealt with at the sitting on 13 August. (See also the reference to these bills under Orders for the production of documents)

There are precedents for a non-government majority in the Senate rearranging the order of government business (see *Odgers' Australian Senate Practice*, 12th ed., 2008, pp 264-5), but this rearrangement involved an unusual number of bills.

The Scrutiny of Bills Committee in a report on 15 June raised issues with the CPRS legislation. If it is passed at the second reading it is likely to be the subject of a very large number of amendments in the committee stage.

The first of the government's National Broadband Network legislation was introduced into the Senate on 25 June, and deferred in accordance with the order passed on 13 May whereby the legislation is not to be considered until the government produces the associated information required by an order for the production of documents.

The Renewable Energy package of legislation was referred to a committee for report in August by an amendment to a Selection of Bills Committee report on 18 June.

The Australian Business Investment Partnership bills (the so-called "Ruddbank" bills) that are part of the government's strategy for dealing with the global financial crisis were extensively amended but then rejected at the third reading on 16 June. The Greens declined to support the legislation because their amendments relating to curtailing executive pay were not agreed to.

There was more agreement on other less contentious legislation. Non-government amendments to four bills were agreed to by the government, including Greens amendments to the pharmaceutical benefits cost recovery legislation for a review of the legislation (15 June), amendments moved by Senator Xenophon to the Fair Work Bills (17 June), an Opposition amendment to establish a register of government borrowings as part of the legislation guaranteeing state and territory borrowings (18 June), an Opposition amendment to make it clear that the government's new statutory body, Health Workforce Australia, has no power to deal with accreditation to practitioners (24 June), and a government amendment to the disability discrimination legislation arising from the report of the Legal and Constitutional Affairs Committee (25 June).

An amendment to the motion to the second reading of the annual appropriation bills, calling on the government to respond to reports of the Finance and Public Administration Committee and the Appropriations and Staffing Committee on the matter of the ordinary annual services of the government, was rejected on 25 June, with government and Opposition senators voting against it. This appears to have been a mistake, with the major parties not realising the nature of the amendment they were dealing with, and it is expected to be corrected in the next sittings.

ORDERS FOR DOCUMENTS

A resolution on 17 June set out the history of attempts by the Select Committee on Fuel and Energy, supported by the Senate, to extract from the government information on its

modelling on climate change. A further resolution on 25 June declared the government contemptuous for failing to produce this information. It appears not to be appreciated that failure to produce the information could provide a ground for further deferring or rejecting the CPRS legislation, which could be put in the same situation as the National Broadband Network legislation (see above under Legislation).

An order was passed on 18 June for documents relating to the awarding of employment services contracts, a matter of high political controversy. The government's response on 22 June stated that it was not possible to comply with the order because of the voluminous nature of the information, and compliance would engage too many resources. It was also said that there were concerns about privacy of other parties. The government undertook, however, to ask its probity adviser for a further report on the tendering process for the contracts.

An order for documents relating to the Australian Building and Construction Commission passed on 23 June was unusual in that it had the support of the government. The documents were duly produced on the following day.

An order for information relating to timber imports passed on 25 June has a deadline of 11 August.

An order passed on 25 June combines a request for information with a formal order. It asks that the Productivity Commission produce a report on some aspects of the CPRS, and requires that that report and information already in the possession of the Commission be produced by 6 August.

DELEGATED LEGISLATION

Ministerial directions under the Building and Construction Industry Improvement Act were tabled by leave by the Opposition on 24 June, and then a notice of motion to disallow the directions was given. This tactic to achieve early disallowance of delegated legislation has a long and venerable history (see *Odgers' Australian Senate Practice*, 12th ed., 2008, p. 330). The instrument was duly disallowed on 25 June. One stated ground for the disallowance was that the government was attempting to carry out its changes to the Building and Construction Industry Commission by delegated legislation ahead of its promised legislation on the subject.

A motion to disallow export control orders was postponed on 25 June to August following a ministerial undertaking to reconsider the orders.

PRIVILEGES COMMITTEE

A reference was made to the Privileges Committee on 24 June arising from the so-called “utegate affair”. The reference asks the committee to consider whether the witness before the Economics Committee who revealed the alleged email from the Prime Minister’s office at the centre of the affair was subjected to any adverse treatment as a result of his evidence. Another proposed reference to the committee, however, was rejected on 25 June, although the President gave precedence to it under standing order 81. This would have asked the Privileges Committee to consider whether any false or misleading evidence was given to the Economics Committee and whether any false documents were used as a basis for questioning in the hearing. The proposed reference was rejected by equally divided votes, with Senator Fielding voting with the Opposition. This matter may be revisited as further information about the affair emerges from inquiries by the Australian Federal Police and the Auditor-General.

COMMITTEE REPORTS

In addition to the many committee reports on the legislation considered, as is usual at this time of the year several committee reports on major inquiries were presented. Reports on the estimates hearings were also substantial.

PROCEDURAL MATTERS

Great controversy was caused by a request by the President that Senator Hanson-Young not have her young child in the chamber during a division on 18 June. It was acknowledged that this request was in accordance with standing order 175, which requires that only senators and officers attending on the Senate be in the seating area of the chamber during a sitting, although Senator Hanson-Young and others have taken small children into the chamber on previous occasions. The standing order was amended in 2003 to grant exemption to breastfeeding senators, following controversy in Victoria about that subject. A motion to dissent from the President’s “ruling” was turned into a reference to the Procedure Committee on 22 June to ask the committee whether the exemption should be widened to include small children in other circumstances.

Proposals by Senator Bob Brown and Senator Xenophon to change the membership of domestic committees were not proceeded with pending a review of the membership formulae of such committees.

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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