

DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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OPENING OF PARLIAMENT

The 43rd Parliament was officially opened on 28 September 2010 by the Chief Justice of the High Court, Mr Justice French, appointed as the Deputy of the Governor-General under section 126 of the Constitution to perform this task. The Governor-General attended the Parliament in the afternoon to deliver the usual speech outlining the newly-elected government's legislative program for the session. The opening followed the traditional proceedings but included an Indigenous welcome to country ceremony in accordance with decisions taken by each House in June (see Bulletin No. 243).

PROROGATION

The 42nd Parliament had been prorogued on 19 July and the House of Representatives dissolved in preparation for an election for the House and half the Senate which was held on 21 August 2010. For questions about prorogation, the status of business before the Senate and the ability of Senate committees to meet after prorogation, see Bulletin No. 217 (15 October 2007).

During the prorogation period, Senate committees continued to hold private meetings and to present reports, although no public hearings were held. Committees presented 54 reports between 25 June and 27 September and while many were interim or procedural in nature, indicating committees' intentions to take up inquiries again in the new Parliament, there were also many substantive reports presented. For a full listing of these see the *Journals of the Senate* of 28 September 2010.

PARLIAMENTARY REFORM: APPLES AND PAIRS

Between the election on 21 August and the opening of Parliament, much attention was focused on the formation of a government and, as that process developed, on the question of parliamentary reform. It was soon clear that the proposed reforms were directed exclusively at the House of Representatives to transform it from an executive-dominated forum to a multi-party chamber with a minority government. It is not surprising that many of the proposed reforms adapt procedures used for many decades in the Senate where it has been unusual for any party to command a majority of seats and where multi-party composition is the norm.

Towards the latter part of the period, there was an intense focus on the position of Speaker of the House of Representatives. Unlike the President of the Senate under section 23 of the Constitution, the Speaker does not exercise a deliberative vote. Section 40 of the Constitution provides that questions in the House shall be decided by a majority and the Speaker shall not vote except when the numbers are equal, in which case the Speaker shall have a casting vote. The party which supplies the Speaker, by convention the government party, thus effectively loses a vote. In the post-election House, this would leave the Government with 75 likely votes, giving it the narrowest possible margin over the Opposition with 74 likely votes.

The reform proposals developed by independent members and agreed to by both the Government and the Opposition provided for this disadvantage to be minimised. The Deputy Speaker, to be elected from an alternate party to the Speaker, was to abstain from voting on any matter and thus effectively "pair" the Speaker's vote, taking the Government's margin to 2 votes. The agreement suggested that if the Speaker were not from a major party, comparable pairing arrangements would apply.

When one of the Independents offered himself as a potential candidate for the Speaker's position, questions were raised about the constitutional validity of a mechanism that both neutralised the Speaker's vote but, in doing so, granted the Speaker a de facto vote. The flaws in the proposal were exposed when it became clear that the Speaker would need to announce to the House on each occasion how he would have voted if he had a deliberative vote, so that a member voting the other way could voluntarily absent him or herself from the vote. Thus the Speaker, far from being a neutral umpire, would be required to express a view on every question arising before the House.

The Government sought advice from the Solicitor-General which it made public, yet another example of publication of legal advice contrary to the often expressed claim that legal advice to government is never published. The advice argued that there was no constitutional impediment to the proposed pairing arrangements provided that it did not give the Speaker a deliberative vote, did not deprive the Speaker of the casting vote and was adhered to voluntarily by the "paired" member. However, the advice did not examine the constitutional propriety of such an arrangement or consider how it might be regarded as a subversion of constitutional principle.

These questions cannot arise in the Senate because section 23 of the Constitution provides that each senator shall have one vote. Pairing arrangements in the Senate (which are always informal and not recognised by the Chair) are therefore a case of matching apples with apples.

ORDINARY ANNUAL SERVICES OF THE GOVERNMENT

An interesting feature of the parliamentary reform agreements between the government and the Australian Greens, and the country independents and both major parties, was the inclusion of a reference to the issue of ordinary annual services. The Senate resolution on ordinary annual services (agreed to on 22 June 2010) was noted and the various parties and non-aligned members agreed to develop a mechanism to resolve this issue prior to the next appropriation bills being introduced. The agreements no doubt supersede the letter from the former Finance Minister, Mr Tanner, dated 14 July, responding to the Senate's resolution, which continued to reject the Senate's position. The letter was tabled in the Senate on 28 September. As has been pointed out on numerous occasions, the main sticking point is the inclusion of new policy proposals in the appropriation bill for the ordinary annual services of the government rather than in the bill which the Senate may amend, contrary to the Senate's interpretation of section 53 of the Constitution.

ELECTION PETITION

Also tabled on 28 September was a copy of an election petition to the High Court sitting as the Court of Disputed Returns in the matter of *Hawkins v Abetz*. This is a challenge under section 44 of the Constitution to Senator Abetz's election on the grounds that he bears allegiance to a foreign power. It is Mr Hawkins' contention that Senator Abetz has not properly renounced his German citizenship, a point clearly rejected by Senator Abetz.

ADDRESS-IN-REPLY

On 28 September, the President reported his receipt of a copy of the Governor-General's opening speech. The following day a motion was moved for a reply to the speech, called the address-in-reply because communications from the Senate to the Governor-General take the form of an address (as distinct from communications between the Houses which take the form of messages). Standing order 3 provides for the address-in-reply while standing order 171 provides a mechanism for other addresses. Like the opening procedures themselves, the address-in-reply is one of those quaint traditions that persist despite the modernisation of other procedures. It thanks the Governor-General for a speech written by, and expressing the views of, the executive government. However, debate on the address is not covered by the rule of relevance and it is therefore an opportunity for wide-ranging debate on a broad range of subjects. As a motion, the address may also be amended. On 29 September, the Leader of the Opposition in the Senate, Senator Abetz, moved an amendment critical of the new government's performance so far. If the amendment is agreed to, it will form part of the document formally presented to the Governor-General by the President, accompanied by senators to Government House. Amendments to the address-in-reply have been relatively common in the Senate over the years.

PRIVATE SENATORS' BILLS

Senators introduced a large number of private senators' bills during the week. While this is a common occurrence at the commencement of any new Parliament, the difference this time is that the provision of better opportunities for consideration of private members' and senators' bills is part of the various agreements on parliamentary reform, including that made between the government and the Australian Greens. On 29 September, on the motion of the Leader of the Australian Greens, Senator Bob Brown, the Procedure Committee was given a reference on specific procedures for the consideration of private senators' bills on Monday evenings. The committee is due to report on 27 October. It may be that the number of private members' and senators' bills passed into law since Federation (19) will significantly increase during the life of the 43rd Parliament.

SPRING SITTINGS 2010 AND SUPPLEMENTARY BUDGET ESTIMATES HEARINGS

On 29 September, the Senate agreed to motions setting its sitting days for the remainder of 2010 and supplementary budget estimates hearings commencing on 18 October. Changes were also agreed to in relation to the grouping of committees for estimates purposes, the allocation of portfolios to committees and the names of two committees to reflect changed portfolio arrangements.

GREEN LOANS

The Auditor-General delivered strong criticism of the green loans program in a report tabled on 29 September. The Auditor-General found significant problems of administration of the various schemes as well as significant probity issues regarding compliance with the government's Procurement Guidelines.

SELECT COMMITTEES

The Select Committee on the reform of the Australian Federation was re-appointed on 29 September while a new Select Committee on the Scrutiny of New Taxes was appointed on 30 September. With terms of reference relating to the minerals resource rent tax and a possible carbon tax, this select committee will, in some respects, continue the work of the Select Committee on Fuel and Energy appointed in the previous Parliament.

JOINT COMMITTEES

The number of joint committees continues to grow like Topsy. As well as those existing in the 42nd Parliament, a Joint Select Committee on Problem Gambling has been established as a consequence of the agreement on parliamentary reform between the government and independent member for Denison, Mr Wilkie. A bill which establishes a joint statutory committee on human rights was also reintroduced in the House of Representatives on 30 September. The Joint Select Committee on Problem Gambling will be supported by the Senate Committee Office.

Members were appointed to committees on 30 September. For the most part, committee membership remains largely consistent with the membership of committees in the 42nd Parliament. The major changes are usually held over till the following 1 July when the new senators' terms begin.

The first committee references of the 43rd Parliament were to the Procedure Committee (2), the Rural Affairs and Transport References Committee (on pilot safety) and the Community Affairs References Committee (on online gambling). By close of business on 30 September, all but one of the references committees had presented reports recommending the re-adoption of inquiries not completed in the 42nd Parliament. The Selection of Bills Committee also made a large number of recommendations to refer bills to committees. Committees are therefore back in business with a vengeance.

ORDERS FOR PRODUCTION OF DOCUMENTS

No Bulletin would be complete without a mention of orders for production of documents. The yearly report on unproclaimed legislation, required by standing order 139(2), was tabled on 30 September and returns continued to be presented in response to the various continuing orders requiring information about agency appointments and vacancies, grants, contacts and files. Four orders for the production of documents relating to various taxation issues were agreed to on the motion of Senator Cormann. The Government provided statements in response but little by way of information. It was claimed that some of the information required was commercial-in-confidence and its disclosure may prejudice negotiations between private companies. No doubt the issues will be explored further during estimates or when the Senate next meets.

SENATE PUBLICATIONS

The latest supplement to the 12th edition of Odgers was tabled on 28 September, together with *Business of the Senate, Work of Committees* and the *Questions on Notice Summary* for the 42nd Parliament.

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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