



DEPARTMENT OF THE SENATE

PROCEDURAL INFORMATION BULLETIN

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UNANSWERED QUESTIONS TAKEN ON NOTICE AT ADDITIONAL ESTIMATES HEARINGS

On the last sitting day before the budget estimates hearings, Opposition senators made extensive use of the procedure provided in standing order 74(5) to seek explanations from ministers for answers not provided to questions taken on notice at estimates hearings once 30 days had passed after the deadlines set by committees for the submission of those answers. Explanations were sought in nine cases and motions were moved either to take note of the explanation or failure to provide one. In one case, a senator moved a motion for the production of the outstanding answers by a new deadline.

Standing order 74(5) gives the right to a senator to move without notice a motion with regard to a minister's failure to provide either an answer or an explanation. Senator Back was therefore able to move a motion for an order for production of the answers without the usual requirement to give notice. This mechanism, which also applies to unanswered questions on notice and returns to order more than 30 days overdue, is an important safeguard against executive delay in providing information to the Senate. The opportunity to move motions "with regard to" a minister's failure to answer or explain provides senators with a wide scope to take follow-up action and, at the least, by debating the matter, to use up time that could otherwise be devoted to government business (although that was not a factor in this case, given that government business had concluded for the week).

DIVISION HELD AGAIN

There is a long-standing practice in the Senate that divisions that do not reflect the will of the Senate are taken again by leave where a senator is inadvertently absent, provided that the senator concerned explains the circumstances to the Senate. Just before question time on 12 May, an Opposition senator missed a division in committee of the whole on the Sex and Age Discrimination Legislation Amendment Bill 2010, on a proposal to leave out an item in a schedule. Had he been present, the vote would have been equally divided and the item omitted from the bill because it lacked majority support. His absence meant that there was a majority in favour of the item remaining in the bill. After the senator provided an explanation for his absence, leave was granted for the order of the day to be called on before general business and for the vote to be taken again.

LEGISLATION

Numerous relatively non-controversial bills were passed and some bills were amended, including the Electoral and Referendum Amendment (Provisional Voting) Bill 2011 and the Sex and Age Discrimination Legislation Amendment Bill 2010 referred to above. Opposition amendments to the Electoral and Referendum Amendment (Enrolment and Prisoner Voting) Bill 2010 were unsuccessful. This bill, among other things, gave effect to recent decisions of the High Court in *Roach v Electoral Commissioner* [2007] HCA 43 (on prisoner voting rights) and *Rowe v Electoral Commissioner* [2010] HCA 46 (on the right to enrol between the issuing of the writ and the close of the roll).

ESTIMATES HEARINGS

Committees may schedule estimates hearings outside the days specified by the Senate for the main hearings to occur, but require the authorisation of the Senate to do so if the hearings coincide with sittings. A proposal by the Environment and Communications Legislation Committee to hold two days of hearings during sittings of the Senate in June, however, aroused concern. The notice of motion was postponed and amended to detail specific times required for the hearings and the purpose of each. It appeared that the additional hearings were required because certain agencies had indicated their unavailability for the scheduled hearings (despite the timetable for estimates having been set since late last year). The amended motion was agreed to but was modified by a subsequent resolution to reduce the hearings to one session for two specified agencies. The third agency involved in the original proposal would now appear to be available for the scheduled hearings. It is possible that the changes resulted from the original proposals coming to the attention of ministers who reminded their officers of their duty to be accountable to the taxpayers through the vehicle of estimates hearings.

AUDIT OFFICE BUDGET

Changes to secure greater financial independence for the Auditor-General were made in 1997 when the Audit Act 1901 was updated. The changes gave a greater role to the Joint Committee of Public Accounts and Audit which this week presented a statement on the draft estimates for the ANAO for the 2011-12 financial year. A similar role is performed for the Senate Department by the Appropriations and Staffing Committee which determines the estimates for inclusion in the appropriation bill for the parliamentary departments. That committee is due to report before the Senate considers the bill.

CONSIDERATION OF PRIVATE SENATORS' BILLS

The temporary order relating to the consideration of private senators' bills was extended on 12 May till the end of the year, along with the temporary order modifying the rules for questions without notice. The process for consideration of private senators' bills remains under review by the Procedure Committee. On 12 May, it had been expected that the committee stages of two Opposition bills would be considered, both of which had recently been reported on by legislation committees. However, proceedings on the first bill consumed the available time and both bills were renominated

for consideration at the next opportunity. Private senators' bills are subject to the same standing orders as government bills. Although there is no capacity to declare them urgent and apply time limits under standing order 142, comparable limitations can be applied by a majority of the Senate. On this occasion, there was no attempt to limit consideration of the bills.

FORMAL BUSINESS

Further problems with the procedures for dealing with formal motions were experienced on 11 May when one formal motion took around 45 minutes to determine. The reason was that a significant number of senators were granted leave to make statements and another senator was granted leave to move an amendment to the motion and then to amend his amendment. The motion was effectively debated and was also amended, contrary to standing order 66. The use of formal motions is under consideration again by the Procedure Committee which has examined the issue on numerous occasions. It remains a problematic procedure for dealing with complex policy motions, including those relating to foreign affairs.

PARTICIPATING MEMBERS

The concept of participating membership has spread since it was first used in the redesign of the committee system in 1994 to enable minor party senators, in particular, to participate in committee work from which they had previously been excluded because of their small numbers and the prevailing membership formulae. (Strictly speaking, the concept was a feature of the original estimates committees from 1970 and the right of any senator to participate in any estimates hearing.) The current Parliament has seen the concept extended to some joint committees. On 11 May, the Senate resolved to refer an inquiry on the funding of political parties and campaigns to the Joint Standing Committee on Electoral Matters and to vary the membership of the committee for the purposes of that inquiry. The House agreed to the variation but also proposed that there be provision for participating members. The message was reported on 12 May and agreed to, with the Senate appointing participating members later the same day.

NEW SENATE

The current Senate has only two more scheduled sitting weeks. Arrangements were put in place on 11 May for variations to the routine of business in those weeks to allow considerable time for valedictory statements relating to the retirement of 12 senators, including the Deputy President and former President, Senator Ferguson, who has served the Senate since 1992. Retirees include several other senators with long service. The new Senate will be sworn on 4 July. There has not been an early July swearing of senators since 1950 when the new Senate was sworn on 6 July, the "old" Senate having last met on 22 June. On two occasions since 1901, the Senate has sat on 30 June and 1 July in a changeover year (1926 and 1938). On two further occasions, a new Senate has been sworn on 1 July following late May or June meetings of the "old" Senate (1920 and 1941). All of these occasions occurred in much less complex times when senators did not have

individual offices, let alone computers, mobile phones, staff and electorate offices. While the logistics for this changeover will be much more difficult than they have been in the past, the same procedures will be followed as on all previous occasions.

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 <http://www.aph.gov.au/Senate/index.htm>

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