

APPENDIX 2

Matter raised by Senator Reynolds – Misadventure and explanations for a senator's absence from a vote

The then President referred a request, from Senator Reynolds, that the committee review the circumstances of the vote on a disallowance motion on 13 June 2017 and the practice adopted when a Senator is absent from a vote due to misadventure. Senator Reynolds attached to her letter a *BuzzFeed* news article, referring to the initial vote taken on 11 May 2017, and an extract from the Senate Hansard of 13 June 2017 containing what Senator Reynolds described as 'the subsequent and contradictory explanation' made by Senator Lambie.

'misadventure'

The Senate has for many years proceeded on the basis that its decisions should reflect the composition of the Senate as elected. This principle underpins the Senate's practice of allowing divisions to be taken again, by leave, where they have been affected by 'misadventure'. There is no precise definition of that term, but it suggests that a senator intending to vote was prevented by circumstances from doing so. The practice is based on standing order 104, which provides that a division may be taken again if necessary to ensure that a decision based on confusion or error does not stand.

The accepted practice is that a senator affected by misadventure seeks leave of the Senate to explain the circumstances of their missing the vote. For example, the second reading vote on the Passenger Movement Charge Amendment Bill 2016, lost on 23 November 2016, was put again by leave the following day, after the senators involved explained their earlier absence. The Senate has generally accepted such explanations and given leave for the vote to be held again; however, leave may be refused by any senator.

On 13 June 2017, Senator Lambie provided an explanation for missing a vote on the previous sitting day, 11 May. Leave was refused to have the question put again, however, apparently on the basis of conflicting reports of the senator's intentions and the delay in her making the explanation. After leave was refused, the proponent of the motion successfully suspended standing orders and the Senate ordered that the vote be taken again. [The division revealed that a number of senators had changed their positions in the intervening time: what had been an equally divided vote in May succeeded 40 Ayes to 30 Noes in June.]

Discussion

As noted above, the practice in cases of misadventure is based on standing orders intended to ensure that decisions made in cases of confusion or error do not stand.

Following the practice, by making an explanation, does not guarantee that a vote will be taken again; any senator may refuse leave. If leave is refused, the original vote stands, unless authority to revisit the matter is found elsewhere. For instance, the standing orders provide a mechanism for the rescission of Senate votes after notice – sometimes requiring an extended period of 7 days’ notice – and requiring an absolute majority: standing order 87. The Senate may also rescind or reverse earlier decisions with leave, or pursuant to a suspension of standing orders. In effect this is what has happened in this case: leave to correct the effects of a claimed misadventure was refused, but a majority of the Senate agreed to suspend standing orders to require the question to be put again.

It may reasonably be expected that claims of misadventure should be raised promptly after the vote in which they occurred, although what is reasonable will no doubt vary with circumstances. There are procedural and statutory constraints on revisiting certain votes on legislative matters, in any case. For instance a bill passed by the Senate and returned to the House cannot be recalled, and a vote on a disallowance motion may not be revisited after the statutory period for disallowance.