

The Senate

Procedure Committee

Declaration of interests: registration of Senators' share tradings

Unanswered questions and orders for documents: proposed amendments of standing orders 74(5) and 164

Repeated motions for suspension of standing orders: ruling of the President of 14 September 2005

Second report of 2005

October 2005

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THE SENATE
PROCEDURE COMMITTEE
SECOND REPORT OF 2005

The committee reports to the Senate on the following matters referred to the committee:

DECLARATION OF INTERESTS: REGISTRATION OF SENATORS' SHARE TRADINGS

On 20 June 2005 the Senate made the following reference to the committee:

- (1) That the following matter be referred to the Procedure Committee for inquiry and report:

The adequacy and appropriateness of the Register of Senators' Interests in relation to the issue of share market activity by senators, their spouses or partners and dependants having regard to:

- (a) whether the requirements under Resolution 1 of the resolutions relating to the registration and declaration of interests, agreed to on 17 March 1994, adequately reflect changing practices in the nature of Australian shareholdings and the growth of share trading;
 - (b) the appropriateness of the advice requirements in Resolution 1 in relation to changes in the nature of shareholding interests where share trading occurs on a frequent basis; and
 - (c) any related matters.
- (2) That the Procedure Committee may seek advice from, and take into account the views of, the Standing Committee of Senators' Interests.

This reference was made in the context of suggestions in the Senate that share tradings may not have been registered in accordance with the requirements of the Senate's resolution. On 5 October 2005 the Privileges Committee reported that a senator had failed to comply with the requirements for the declaration of interests in respect of share tradings, but had not done so knowingly, which is the condition required by the resolution of the Senate for a contempt to be found (123rd Report of the Privileges Committee). The finding of the committee was endorsed by the Senate on 6 October 2005.

In accordance with paragraph (2) of the reference to the Procedure Committee, the committee agreed to seek the views of the Senators' Interests Committee. The only proposal before the Procedure Committee for a change in the registration requirements was for an extension of the time for the registration of share tradings from 28 days to 60 days.

The Senators' Interests Committee advised that it could not find any sound case for an extension of the time limit for notifying changes in share holdings, having regard to the requirements imposed in other jurisdictions, and referred to the confusion which could be caused by a different time frame for such notifications. The committee further advised:

This committee is sensitive, however, to the position of senators who have considerable numbers of share transactions and to the possibility that changes in its administrative procedures could be made to facilitate compliance by senators with the existing rules. The committee has

therefore agreed, following the recent submission of new statements of interests by all senators, to write to senators and seek their views on any administrative changes that could be made to facilitate compliance with the resolution. The committee is undertaking this survey pursuant to its duties under standing order 22A(1) to inquire into and report upon the arrangements made for the compilation, maintenance and accessibility of the register and to consider any proposals made by senators as to the form and content of the register. When the committee has completed its inquiries it will report to the Senate.

The Procedure Committee then resolved to defer its consideration of the matter until the Senators' Interests Committee conducts its review and reports on any changes which that committee considers advisable.

**UNANSWERED QUESTIONS AND ORDERS FOR DOCUMENTS:
PROPOSED AMENDMENTS OF STANDING ORDERS 74(5) AND 164**

On 23 June 2005 the Senate resolved:

That the following proposed amendments to the standing orders be referred to the Procedure Committee for inquiry and report:

- (1) That standing order 74(5) be amended by omitting "and does not" and substituting "or if a question taken on notice during a hearing of a legislation committee considering estimates remains unanswered 30 days after the day set for answering the question, and a minister does not".
- (2) That standing order 164 be amended by adding:
 - "(3) If a minister does not comply with an order for the production of documents, directed to the minister, within 30 days after the date specified for compliance with the order, and does not, within that period, provide to the Senate an explanation of why the order has not been complied with which the Senate resolves is satisfactory:
 - (a) at the conclusion of question time on each and any day after that period, a senator may ask the relevant minister for such an explanation; and
 - (b) the senator may, at the conclusion of the explanation, move without notice —That the Senate take note of the explanation; or
 - (c) in the event that the minister does not provide an explanation, the senator may, without notice, move a motion in relation to the minister's failure to provide either an answer or an explanation."

The effect of these amendments of the standing orders would be to apply to unanswered questions on notice in estimates hearings, and orders by the Senate for the production of documents, the procedure currently applying to questions on notice under standing order 74, whereby a senator may seek, immediately after question time, an explanation from the responsible minister of the failure to answer the question. This right of a senator to seek an explanation would not arise until an estimates question on notice had remained unanswered for 30 days after the deadline set by the relevant legislation committee for answering such questions, and 30 days after the date set by the Senate for responding to an order for documents, respectively.

The current procedure applying to questions on notice is rarely used. Between the August 2003 and the June 2005 sittings, a period of 109 sitting days, senators used this procedure on only 24 occasions, although on any sitting day there were up to 400 questions on notice unanswered for over 30 days.

The committee considers that the proposed changes would provide an additional incentive for departments and agencies to answer estimates questions on notice and to respond to orders for documents within a reasonable time. The committee therefore recommends that the changes be adopted.

The attachment to this report shows the amended versions of the standing orders which would result.

**REPEATED MOTIONS FOR SUSPENSION OF STANDING ORDERS:
RULING OF THE PRESIDENT OF 14 SEPTEMBER 2005**

On 15 September 2005 the Senate referred to the committee, by means of an amendment to a motion that the ruling of the President be dissented from, a ruling by the President to the effect that the Chair would not accept a second motion for a suspension of standing orders to allow a senator to make a statement for which leave had been refused.

The reference from the Senate was as follows:

That the ruling of the President on 14 September 2005 (that the Chair could not accept repeated motions to suspend standing orders to allow senators to make statements) be referred to the Procedure Committee for inquiry and report, particularly considering whether the President should exercise a discretion in applying the rulings of President Sibraa of 1991 to 1993 to ensure that adequate opportunity is given to non-government senators to state a case for a suspension of standing orders.

Context of the ruling

The sequence of events leading to the President's ruling should be set out to provide the context of the ruling. When the Telstra privatisation package of bills was to be called on, a minister moved a motion that the bills be considered urgent bills, as the first step to limiting the time for debate on the bills under standing order 142. An Opposition senator moved a motion to suspend standing orders, pursuant to contingent notice, to allow debate to take place on that motion. After a closure motion was carried, the suspension motion was rejected. The motion for urgency was then passed. The minister then moved a motion for the allotment of time for the bills. Another motion to suspend standing orders pursuant to contingent notice was moved, the closure on that motion was carried, the suspension motion was negatived, a closure on the motion for the allotment of time was carried, and the motion for the allotment of time was then carried. An Opposition senator then sought leave to make a statement, was refused leave, and moved a motion to suspend standing orders, pursuant to contingent notice, to allow him to make a statement. A closure motion on that motion was carried and the suspension motion was then rejected. An Australian Greens senator then sought leave to make a statement, was refused leave, and moved a suspension of standing orders pursuant to an identical contingent notice of motion standing in his name. The President then ruled as follows:

The President ruled that he could not receive any further motions for the suspension of standing orders. The majority of the Senate had determined that the bills be considered as urgent bills and had also declined to suspend standing orders in its earlier votes. The majority of the Senate having determined that it should proceed with the bills as urgent bills and that standing orders should not be suspended at this time to allow other matters to be considered, he was obliged to call on the Clerk to read the order of the day for the consideration of the bills. This is in accordance with the rationale of the rulings made by President Sibraa between 1991 and 1993 and supported by the Procedure Committee, as recorded in *Odgers' Australian Senate Practice*, 11th ed, 2004, p. 169.

A motion of dissent from that ruling was moved and was deferred to the next day of sitting, when an amendment to the motion was carried referring the matter to the Procedure Committee.

President Sibraa's rulings and their rationale

The rulings of President Sibraa which were referred to were to the effect that only one motion to suspend standing orders pursuant to a contingent notice of motion may be moved on the occurrence of the contingency to which the notice of motion refers.

The particular contingent notices in issue at that time were those which allow a senator to move the suspension of standing orders to rearrange the business before the Senate.

The rationale of President Sibraa's rulings is that, once the Senate has been called upon once to suspend standing orders to allow a motion to rearrange business or to bring on a new item of business, and has declined to do so, it should not repeatedly be asked to do so. By moving an endless series of motions to suspend standing orders pursuant to the same contingent notice, a senator, or different senators in turn, could prevent the Senate proceeding to its next business, notwithstanding that the Senate had indicated that it did not wish to suspend standing orders to allow its business to be rearranged or to allow new business to be brought on, and notwithstanding that the Senate had determined the business it wished to be dealt with.

The rationale of the rulings is not affected by different senators seeking to employ the same contingent notice of motion to seek the suspension of standing orders, or the suspension of standing orders being sought to allow different rearrangements of business or different new items of business to be brought on. It is always possible for senators to think of an endless series of different rearrangements or different new items of business. The President's ruling is essentially designed to prevent potentially unlimited obstruction of Senate business and potentially unlimited frustration of the intentions of the majority of the Senate.

Procedure Committee's 1993 Report

The Procedure Committee considered President Sibraa's rulings in its First Report of 1993, and supported the rulings.

The committee in its report considered the suggestion that the rulings could prevent a senator moving, on the occurrence on the same contingency, a motion to suspend standing orders for a different purpose, when a motion to suspend standing orders for another purpose has already been negatived (if such a motion has been carried the ruling does not restrict the rights of such a senator because, when the occasion arises for another motion to suspend standing orders to be moved, that occasion is a new occurrence of the relevant contingency, because an item of business has intervened). The committee pointed out that a senator, either during the debate on

the motion to suspend standing orders, or by foreshadowing an amendment before the question is put, can indicate to the Senate that, if the motion to suspend standing orders is successful and the subsequent procedural motion is moved, the senator will move an amendment to the procedural motion to substitute the senator's purpose for the purpose of the senator who has moved the suspension motion. The Senate will then know the options to be presented to it if standing orders are suspended. Then, if the suspension motion is successful, the senator may move such an amendment to the subsequent procedural motion.

President Sibraa's discretion

Following that report, on 20 December 1993, when the Native Title Bill 1993 was called on, the then Leader of the Opposition moved a motion to suspend standing orders to allow him to move a motion to defer consideration of the bill. That suspension motion was rejected. Another Opposition senator then moved another motion to suspend standing orders to allow him to move a motion to refer the bill to a committee. President Sibraa then made the following ruling:

The President pointed out that the motion by Senator Alston was technically contrary to his rulings of 3 and 5 December 1991 and 16 November 1992 relating to repeated motions to suspend standing orders pursuant to contingent notice, which were analysed and upheld unanimously by the Procedure Committee in its First Report of 1993. He had allowed the motion to proceed on the basis that it had a different substantive motion as its object, but if there were any further attempts to use the same contingent notice of motion he would have to consider applying his rulings.

The then President thereby exercised the kind of discretion contemplated in the current reference to the Procedure Committee.

Conclusion

The rationale of President Sibraa's rulings applies equally to the ruling of the President on 14 September 2005. The Senate having refused leave to one senator to make a statement, having rejected a motion to suspend standing orders to allow the statement, and having indicated by its votes that it wished to proceed with the business which was due to be called on, the Senate should not then be led through a potentially endless succession of suspensions of standing orders motions moved by successive senators to allow them to make statements. The ruling of the President was therefore sound. In the circumstances, however, particularly the repeated closure of debate, there may have been a case for the President to allow one further motion to suspend standing orders to allow a senator to make a statement before invoking the Sibraa rulings.

The committee therefore considers that, while the President's rulings should be upheld, the President should in the future, depending on the particular circumstances, consider exercising the kind of discretion exercised by President Sibraa in 1993.

John Hogg
Deputy President
Chair of the Committee

ATTACHMENT

STANDING ORDERS 74(5) AND 164
AS PROPOSED TO BE AMENDED

74 Questions on notice

- (5) If a minister does not answer a question on notice asked by a senator within 30 days of the asking of that question, ~~and does not~~ or if a question taken on notice during a hearing of a legislation committee considering estimates remains unanswered 30 days after the day set for answering the question, and a minister does not, within that period, provide to the senator who asked the question an explanation satisfactory to that senator of why an answer has not yet been provided:
- (a) at the conclusion of question time on any day after that period, the senator may ask the relevant minister for such an explanation; and
 - (b) the senator may, at the conclusion of the explanation, move without notice – That the Senate take note of the explanation; or
 - (c) in the event that the minister does not provide an explanation, the senator may, without notice, move a motion with regard to the minister's failure to provide either an answer or an explanation.

164 Order for the production of documents

- (1) Documents may be ordered to be laid on the table, and the Clerk shall communicate to the Leader of the Government in the Senate all orders for documents made by the Senate.
- (2) When returned the documents shall be laid on the table by the Clerk.
- (3) If a minister does not comply with an order for the production of documents, directed to the minister, within 30 days after the date specified for compliance with the order, and does not, within that period, provide to the Senate an explanation of why the order has not been complied with which the Senate resolves is satisfactory:
- (a) at the conclusion of question time on each and any day after that period, a senator may ask the relevant minister for such an explanation; and
 - (b) the senator may, at the conclusion of the explanation, move without notice —That the Senate take note of the explanation; or
 - (c) in the event that the minister does not provide an explanation, the senator may, without notice, move a motion in relation to the minister's failure to provide either an answer or an explanation.