

The Senate

Procedure Committee

Operation of standing order 55(2) to (5)

Consideration of private senators' bills

Procedures for dealing with formal motions

Use of general business time on Thursdays

Consideration of government documents

Second report of 2011

June 2011

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PROCEDURE COMMITTEE

SECOND REPORT OF 2011

The committee reports to the Senate on the following matters considered at its meeting on 15 June 2011:

Operation of standing order 55(2) to (5)

On 24 March 2011, the "operation of standing order 55(2) to (5) relating to the meeting of the Senate" was referred to the committee on the motion of the Manager of Government Business in the Senate (Senator Ludwig). Paragraphs (2) to (5) provide as follows:

- (2) The President, at the request of an absolute majority of the whole number of senators that the Senate meet at a certain time, shall fix a time of meeting in accordance with that request, and the time of meeting shall be notified to each senator.
- (3) For that purpose a request by the leader or deputy leader of a party in the Senate shall be deemed to be a request by every senator of that party.
- (4) A request may be made to the President by delivery to the Clerk, who shall immediately notify the President.
- (5) If the President is unavailable, the Clerk shall notify the Deputy President, or, should the Deputy President be unavailable, any one of the Temporary Chairmen of Committees, who shall be required to summon the Senate on behalf of the President, in accordance with this standing order.

A notice of motion given on 1 March 2011 by the Leader of the Australian Greens (Senator Bob Brown) is also relevant to consideration of the matter:

That when the Government, or any other senator, intends to rely on the clauses under standing orders 55(2) to (5) relating to an unscheduled meeting of the Senate, leaders of all parties or independent senators shall be consulted in a timely manner prior to the summoning of the Senate.

On 1 March 2011, the Senate met pursuant to these provisions and at the request of the Leaders of the Government and Opposition in the Senate so that the Senate could observe two minutes' silence in memory of the victims of the earthquake in Christchurch, New Zealand, exactly one week after the event and at the same time as observances were occurring in New Zealand.

Paragraphs (2) to (5) of standing order 55 formalise a mechanism, previously contained in sessional orders, for the Senate to be recalled at the request of an absolute majority of its members, and reinforce the principle of the Senate's control over its own sittings. The Senate has met pursuant to these provisions on a number of occasions, some of which were to hold the government of the day to account over various matters. The committee recommends no change to the standing order as currently framed but notes that when a recall under these provisions is contemplated, it is desirable, as a courtesy to all senators, for party leaders and independent senators to be consulted in as timely a manner as the circumstances permit.

Working party

At its last meeting, the committee appointed an informal working party to examine a number of issues in detail, including matters referred by the President under standing order 17 following correspondence from the Leader of the Government in the Senate, Senator Evans (see Attachment 1). The working party comprised the Manager of Government Business in the Senate, Senator Ludwig, as chair, the Manager of Opposition Business in the Senate, Senator Fifield, the Chief Opposition Whip in the Senate, Senator Parry and the Australian Greens Whip, Senator Siewert. The committee also co-opted the Government Whip in the Senate, Senator McEwen. The committee thanks all members of the working party, particularly Senator McEwen, for developing the following proposals for its consideration.

Consideration of private senators' bills

Arising from the Senate's adoption of a temporary order providing for the consideration of orders the day relating to private senators' bills on Thursdays, the committee considered ways to streamline processes for selecting and notifying which bills are to be considered at that time, with the aim of publishing a list of bills that are "debate ready". The proposed scheme is outlined in Attachment 2 and involves administrative practices

rather than procedural changes.

A bill will be regarded as "debate ready" if it has been through any required committee process and internal party processes so that it may be debated with the general expectation that votes can be taken. It is recognised that some bills, including those involving traditional conscience issues or those reflecting suddenly emerging issues, will fall outside the procedures contemplated in this framework. The committee also notes that it is the responsibility of senators sponsoring bills to facilitate their journey through the required processes, including consideration by the Selection of Bills Committee and by party rooms.

The committee recommends that the scheme outlined in Attachment 2 be adopted as a matter of practice.

Procedures for dealing with formal motions

The committee has considered the operation of standing order 66 on numerous occasions. Standing order 66(3) provides that a formal motion shall be put and determined without amendment or debate. Current difficulties are largely attributable to senators seeking leave to depart from these rules and the Senate granting leave, almost as a matter of course. In particular, the number of statements being made by leave in relation to complex motions leads to a *de facto* debate on those motions, contrary to standing order 66. This is because senators, instead of making statements, assert views in the nature of debate by mounting arguments and responding to positions expressed by others.

While the committee recommends no changes to standing order 66, noting its value as a daily opportunity for motions from all sources and of all types to be put to the vote, it urges senators to pay more heed to the existing restrictions. For example, if a senator wishes to amend a notice of motion, then generally, as a courtesy to the Senate, that notice should be postponed till the next day of sitting to enable the senator to use the procedures under standing order 77 to amend the notice in writing and for the notice to appear in its amended form in the next day's *Notice Paper*. Secondly, the committee encourages parties to use internal means to limit the number of senators seeking leave to make statements on motions to one from each group (Government, Opposition, Australian Greens).

Use of general business time on Thursdays

The committee discussed the routine of business on Thursdays and a view was expressed that a general reorganisation of the day might be warranted. The committee proposes to keep the routine of business on its agenda for future consideration.

One observation about the routine of business on Thursdays was that the knowledge that bills to be considered at a particular time were non-controversial enhanced the ability of senators to plan their sitting days and was generally convenient, whereas the cessation of the practice of having a specified time for consideration of such legislation had caused some confusion. The committee suggests that the practice of dealing with designated non-controversial bills be restored for an hour on Thursdays from not later than 1 pm. This would involve no changes to standing orders but would simply require the Manager of Government Business to move the necessary motion at placing of business on either Wednesday afternoon or Thursday after private senators' bills.

Consideration of committee reports under standing order 62(4)

Standing order 62(4) provides that if a committee report is presented at the designated time on Wednesday or Thursday, a motion may be moved without notice in relation to the report and debate may occur for up to an hour on any reports presented during that time. Limited use is made of these opportunities because most reports are presented pursuant to order at the time when Business of the Senate orders of the day are called on.

A particular concern is that major references or select committee reports tend to fall due on last sitting days and one of two outcomes ensues, both unsatisfactory. One is that leave is given to move motions in relation to the reports and lengthy debates take place that, while worthy and necessary elements of the inquiry process, nonetheless compete for time with urgent government business. The sitting day is then extended in an *ad hoc* fashion to deal with that business. The other outcome is that before the reports are presented, the Senate agrees to a motion to vary the routine of business to give precedence to government business. The opportunity to present committee reports is therefore superseded and the reports are presented out of sitting as soon as the Senate rises. The opportunity for senators to speak to important reports on presentation is foregone.

The committee commends the following measures to encourage greater use of the Wednesday afternoon opportunity under standing order 62(4) by:

- encouraging committees to report on Wednesdays rather than last Thursdays by:
 - whips monitoring notices of motion and negotiating amendments to reporting dates;
 - the Senate taking a more vigilant approach to committee referrals and requests for extensions of time and applying an informal policy of keeping last sitting days as free as possible to deal with urgent legislation, including messages between the Houses;
- on Wednesdays, adopting the practice of dealing with Business of the Senate orders of the day for the presentation of references or select committee reports during the standing order 62(4) time (along with any other reports where an indication has been conveyed through the Whips' meeting that debate is likely) (all such reports to be shown on the Red as being presented at that time, although the default position of presenting them as orders of the day could not be superseded by this practice);
- encouraging informal arrangements to divide up the available speaking time;
- at a future time, reviewing the location of the Thursday opportunity (in conjunction with further consideration of the routine of business on Thursdays).

The committee noted that these practices would not apply to legislation committee reports on bills which would continue to be presented as Business of the Senate orders of the day and, in accordance with standing order 24A(10), not debated on presentation. Committees should be aware that if they present reports outside these arrangements (for example, on the last sitting days of the three major blocs of sittings), they should not expect to be granted leave to debate them.

Consideration of government documents

The committee was not able to consider this matter and will address it at a future meeting.

Recommendation

Although the committee makes no formal proposals for changes to standing or other orders, it recommends that the Senate concur with the suggested practices by adopting the report.

Senator the Hon Alan Ferguson
Chair

22 June 2011



Senator Chris Evans

Leader of the Government in the Senate
Minister for Tertiary Education, Skills, Jobs and Workplace Relations

Senator the Hon John Hogg
President of the Senate
The Senate
Parliament House
Canberra ACT 2600

Noted
JH
17.11.10

Dear Mr President

Pursuant to standing order 17(3), I ask that you refer the following matters to the Procedure Committee for its consideration:

- the current operation of procedures for dealing with formal motions;
- the use of general business time on Thursday afternoons;
- whether the consideration of committee reports under standing order 62(4) should be moved to Thursday afternoons, with consequent adjustments in the routine of business, and arrangements generally for the presentation and consideration of committee reports;
- in relation to consideration of government documents at 6.50 pm on Tuesdays and Wednesdays, whether the standing orders should be amended to provide for a return to business till 7.20 pm if the full time for consideration of government documents is not used.

I believe it is time for the committee to review the operation of various aspects of the routine of business, with a view to encouraging more effective use of limited sitting time.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'CE'.

CHRIS EVANS

16/11/10

Consideration of Private Senators' Bills

The following table shows steps in the progress of a private senator's bill, how it is documented and what changes would be desirable to facilitate their consideration under the new procedures.

Stage (NB: some of these stages may occur concurrently)	How documented	Desirable
Bill introduced, read a first time, second reading moved and debate adjourned <i>NB: applies to a bill introduced in the Senate <u>or received from the House of Representatives and sponsored by a senator other than a minister</u></i>	Entered on the Notice Paper as a general business order of the day, given a unique number, stage reached is shown Example: 34 Responsible Takeaway Alcohol Hours Bill 2010—(Senate bill)— <i>(Leader of the Family First Party, Senator Fielding)</i> Second reading— Adjourned debate <i>(Senator Fielding, in continuation, 30 September 2010).</i>	PSBs to be listed in their own section of the Notice Paper under 'Orders of the Day for the consideration of private senators' bills'
Consideration by Selection of Bills Committee and report to the Senate showing recommendations for bills to be referred or not referred, and list of bills deferred to another meeting <i>NB: a recommendation for non-referral does not preclude later referral by another method such as motion on notice or second reading amendment</i>	Selection of Bills Committee report reproduced in Journals and Hansard. Decisions arising from report reflected in Notice Paper, eg in 'Bills referred to committees' and 'Business for future consideration' section (which shows when reports are due and when bills become available for debate)	List of PSBs to be annotated and circulated by Table Office to whips and managers

Stage (NB: some of these stages may occur concurrently)	How documented	Desirable
If bill referred – consideration by a legislation or select committee and report to the Senate	Committee report and other records, including Journals, Notice Paper and Bills List	As above
Consideration by party rooms etc in accordance with internal party practices	Not publicly documented	Whips to feed this information into forward program list
Based on annotated list prepared by Table Office, Whips compile a forward program for each 6-month period, including notional allocation of Thursday mornings to parties/independents and possible list of bills to be considered, indicating debate-ready status of bills (all subject to change) [NEW]		List published on Senate website and circulated in the same way that a government's forward legislative program is circulated (Table Office to provide secretariat support) If this list is regularly updated as the status of bills changes, then it can be the source of information included on the weekly forward program issued by the PLO, provided that, in a non-sitting week preceding a sitting week, this information is available by COB Tuesday
Bill has been cleared through party processes (including any ministerial/Cabinet processes), has been reported from committee (or not referred) and is ready for debate	Bills are listed on the weekly forward program In Week 1, bills for consideration on Thursday are designated by a motion moved on the first available sitting day (Monday or Tuesday) For Week 2 bills, the motion designating them is moved on Thursday of Week 1	Weekly forward program includes information on PSBs Once designated by motion, list of bills appears in the Notice Paper in 'Business for future consideration' under the relevant date, eg: On 16 June 2011 General Business—Private Senators' Bills—Orders of the Day [list of bills] On the relevant date, this list appears at the front of the Notice Paper <i>(NB: this happens currently)</i>