

18 Communications between the houses—Dealing with messages

1. Messages from the House of Representatives

Communications between the two Houses of the Commonwealth Parliament occur through messages from one House to the other. Messages convey business between the Houses and, as a courtesy, information that is relevant to the interests of the other House. Most business conveyed by message relates to legislation.

Some messages require no response and are simply reported by the chair “as early as convenient” (see [standing order 155](#)). Messages of this kind include:

- notification of agreement to Senate resolutions which have been sent to the House for concurrence
- notification of changes to the House of Representatives membership of joint committees
- notification of extensions of time granted by the House for joint committee inquiries referred by the House
- agreement by the House to Senate bills without amendment; and
- agreement by the House to amendments or requests for amendments made by the Senate to House bills.

The Senate sends equivalent messages to the House. No action arises from such messages.

Other messages seek action from the Senate in response to a request from the House. Messages of this kind include those seeking:

- agreement with resolutions passed by the House, including resolutions for the appointment, or variation to the terms of reference, of joint committees
- agreement to bills passed by the House
- agreement to amendments made by the House to Senate bills
- agreement to amendments made by the House to Senate amendments to House bills
- reconsideration of amendments made or requested by the Senate to House bills, where the House has disagreed to them
- reconsideration of Senate amendments disagreed by the House, combined with requests for agreement with substitute amendments made by the House
- reconsideration of Senate amendments or requests to House bills, disagreed by the House, insisted on by the Senate and again disagreed by the House;

or involving combinations or variations of the preceding types of messages.

Again, equivalent messages are transmitted from the Senate to the House.

2. When are messages considered?

Most messages received from the House relate to government business – generally bills – or to joint committees. When a message from the House seeking action by the Senate is reported by the chair, a minister is usually called to move a motion to provide for the consideration of the message either immediately or on the next sitting day. An order of the day for the consideration of the message on

the next sitting day is listed on the *Notice Paper* as government business. Under [standing order 65](#), the government may arrange its business on the *Notice Paper* to suit its changing priorities (see [Guide No. 4](#)—Categories of Business). However, a message transmitting a government bill for concurrence is usually dealt with immediately. Preliminary stages in the consideration of the bill by the Senate are completed and debate is usually adjourned after the motion is moved for the bill's second reading (see [Guide No. 16](#)—Consideration of Legislation).

When a message is received that does not relate to a government initiative, the Senate must determine how it will deal with the business contained in the message. This may require discussions among whips and other senators about who will have the carriage of the business, and motions to give the business a place within the Senate's routine.

3. Procedures for the consideration of messages

The first step in the consideration of a message is for a senator to move a motion proposing the terms of the Senate's response to the House. This motion may be amended and is often debated. When the motion has been determined, it is incorporated into a message signed by the President of the Senate and transmitted to the Speaker of the House of Representatives.

4. Messages dealing with legislation

Negotiations on legislation may require several messages back and forth between the Houses, and may also involve complicated proceedings. For this reason, messages involving the further consideration of legislation are dealt with in committee of the whole which provides a procedurally flexible forum for debating and determining complex matters. The ability for senators to speak several times to a question, which is provided under the procedures for the committee of the whole, is often crucial to the resolution of complex questions about the form and content of legislation.

The special procedures applying to messages concerning legislation returned from the House are contained in [standing order 126\(1\)](#) and [standing order 132\(1\)](#).

The form of the question

As with other messages, the Senate's response to a message concerning negotiations on legislation starts with a motion proposing the terms of the response. This may take one of the following forms:

- That the Senate does not insist on its amendments to which the House has disagreed (or insisted on disagreeing).
- That the Senate insists on its amendments . . .[unusual].
- That the Senate does not insist on its amendments . . . and agrees to the amendments made by the House in their place.
- That the Senate does not insist on its amendments. . .and has made further amendments in their place, in which it seeks the concurrence of the House.

In practice, the government will usually be seeking to resist amendments made in the Senate to which the House has disagreed, so the committee stage begins with a minister moving that the Senate **not** insist on those amendments.

If a majority of senators votes against the motion, the outcome is a reversal of the original proposition contained in the motion. Thus, if a majority votes **against** the motion that the Senate does not insist on its amendments, the effect is that the amendments **are** insisted on. (The situation is more complicated where votes are equally divided. This is described in the section "The effect of equally divided votes", below).

Some motions proposing responses to messages appear to be very complex. One example involved the following situation:

The Senate had made amendments to a House of Representatives bill to which the House had disagreed.

The Senate had insisted on some of its amendments and not on others. It had made amendments to replace the ones it had decided not to insist on.

The House insisted on disagreeing to the original amendments and also disagreed to the replacement amendments and sent a message accordingly.

As negotiations progressed, the government decided to move some further amendments in the Senate to replace one of the original amendments and one of the replacement amendments made by the Senate and also decided to support some of the amendments it had previously disagreed with in the House. When the message from the House was considered in committee of the whole, a minister moved the following motion:

That the committee:

- (a) does not insist on original amendments nos 3 to 7, 10 and 11 made and insisted on by the Senate to which the House of Representatives has insisted on disagreeing;
- (b) does not insist on replacement amendments nos 1 to 5 made by the Senate in place of its original amendments 1, 8 and 9 to which the House has disagreed; and
- (c) makes the following amendments in place of Senate replacement amendment no. 1 and original amendment no. 3:

[text of amendments].

Under [standing order 84\(3\)](#), the Chair may order a complicated question to be divided. Reasons for doing this include ensuring clarity of proceedings and providing an opportunity for senators to vote differently on different aspects of the question. In this example, the first part of the question was broken into three separate questions covering individual or small groups of amendments, and the second part into two. The third part was put separately as well, providing maximum flexibility to the committee in formulating a response to the message. The outcome was that the Senate agreed not to insist on some amendments, to insist on others, and to make further replacement amendments, a position accepted by the House.

In another example, the House had made extensive amendments to a Senate bill and had returned the bill to the Senate seeking the Senate's agreement to the amendments. In the Senate, various parties circulated amendments to the House amendments. The overarching question, that the Senate agree to the amendments made by the House, was divided into separate motions in respect of each of the House amendments. Senators then moved amendments to those amendments and the overarching question was determined step by step. The outcome was that the Senate agreed to the House amendments with further amendments, a position accepted by the House.

The scope of further amendments

Messages at the later stages of the legislative process focus on resolving areas of disagreement between the Houses. Therefore, the standing orders do not permit agreed areas of the bill to be revisited, except to make amendments that are relevant to or consequent upon the acceptance, amendment or rejection of a House amendment. However, if the House disagrees with Senate amendments to House bills, the Senate may propose new amendments as an alternative to the rejected ones.

The rules for dealing with bills returned by the House with outstanding areas of disagreement are contained in standing orders [126](#), [127](#), [132](#) and [134](#) and provide maximum freedom to the Senate to seek agreement with the House. Any actions outside the scope of these rules require

the suspension of so much of the standing orders as would prevent the action. For example, amendments not relevant to, or consequent upon, the acceptance, amendment or rejection of House amendments may not be moved without a suspension of standing orders (see [Guide No. 5—Suspension of Standing Orders](#)).

How many times can a bill be sent between the Houses?

There is theoretically no limit to the number of times a bill introduced in the House of Representatives can be sent back and forth between the Houses in an effort to reach agreement on it. In practice, the number of times a bill moves between the Houses is determined by the likelihood of agreement. If agreement is unlikely or impossible, either House may order a bill to be laid aside. However, even this action may not be terminal. In 1997-98, the Senate twice amended the Native Title Amendment Bill 1997 in terms that were unacceptable to the House, which laid the bill aside on two occasions. When further negotiations on the Senate's amendments led to a breakthrough, the House resurrected the bill by rescinding the motion to lay the bill aside, reconsidered the Senate's amendments and made further amendments reflecting the policy settlement. A message was then sent to the Senate requesting its agreement with the new position. This procedure obviated the need for both Houses to deal with a third bill through all stages.

The standing orders provide that a bill which originates in the Senate may be returned by the House with outstanding disagreements on a maximum of three occasions. If disagreements are unresolved on the bill's third return from the House, the Senate "shall order the bill to be laid aside, or request a conference" (see [standing order 127\(1\)](#)).

5. The effect of equally divided votes

[Section 23](#) of the Constitution provides that the President has an ordinary vote, rather than a casting vote, and that questions are determined by a majority of votes. If the votes are equally divided, the question is *lost* (see [Guide No. 3—Voting in the Senate](#)). This principle guarantees the equality of representation of the original states in the Senate. It is also fundamental in determining the form of question put by the chair during the various stages of the legislative process.

The aim of legislative deliberation is to determine whether a bill, its several component parts and any textual amendments have the support of a majority of the Senate. Thus the questions for each major stage of consideration take the following form:

That the bill be now read a first/second/third time.

If the votes are equally divided, the question is lost and, lacking majority support, the bill proceeds no further.

During committee of the whole, detailed consideration of the bill takes place and amendments may be proposed. Amendments take one of two forms:

- proposals to omit clauses; or
- proposals to make textual changes by omitting words, inserting or adding words, or omitting and substituting words.

Where a clause is proposed to be omitted, the question takes the form:

That the clause stand as printed.

This question is designed to test whether a majority of the committee is in favour of the clause remaining in the bill. An equally divided vote indicates the absence of a majority in favour; the question is therefore lost and the clause is removed from the bill. Putting the question in an apparently more straightforward way:

That the clause be omitted

would produce a flawed result on an equally divided vote. On such an outcome, the *question* would be lost and a clause which did not enjoy majority support would remain in the bill. Therefore, this form of the question is not used except where the Senate is *requesting* the House to make an amendment which the Constitution precludes the Senate from making itself (see [Guide No. 16](#)—Consideration of Legislation). Such *requests* must be supported by a majority.

The same principle underlies the form of the question used to determine the Senate’s response to messages from the House disagreeing with amendments made by the Senate, which usually takes the following form:

That the committee does not insist on its amendments to which the House of Representatives has disagreed.

As noted above, if a majority votes against this motion, the effect is that the amendments are insisted upon. However, if the votes are equally divided the effect is that the amendments are **not** insisted on. The rationale for this outcome is that the equally divided vote indicates that the amendments themselves are now not supported by a majority. If they were, the motion would have been defeated by a majority, possibly the same majority required to make the amendments in the first place. So the bill now proceeds without the amendments. When this occurs, the chair of committees makes a statement explaining the result of the vote.

A further complication arises if an amendment disagreed by the House is an amendment to omit a clause. An equally divided vote on the question that the Senate does not insist on such an amendment means that the clause itself still lacks the support of a majority. Therefore, the amendment to omit the clause is insisted on.

These principles were enunciated in rulings by President Sibraa in 1993 and were endorsed in a report of the Procedure Committee in 1994 (see [chapter 12](#) of *Odgers’ Australian Senate Practice*). They apply regardless of whether the question takes the form, “That the Senate does not insist..” or the form, “That the Senate insists...”.

6. Sending messages to the House of Representatives

Messages are automatically generated when actions by the Senate, for example in relation to legislation, require a response to or from the House. The sending of a message to the House may also be built into the terms of a resolution of the Senate.

[Standing order 154](#) provides that any senator may move a motion, without notice and at any time, that any resolution of the Senate be communicated by message to the House. The motion often includes the words “for concurrence” to indicate that the resolution is intended for the consideration of the House.

Need assistance?

For assistance with any of the matters covered by this guide, government senators or their staff should contact the Clerk Assistant (Table), on extension 3020 or ca.table.sen@aph.gov.au; and non-government senators or their staff should contact the Clerk Assistant (Procedure), on extension 3380 or ca.procedure.sen@aph.gov.au.

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Last reviewed: July 2022