



OCCASIONAL NOTE

Prorogation and a new session of Parliament Long sitting days

The special edition of the *Procedural Information Bulletin* contains information about the process of prorogation to begin a new session within an existing Parliament and some interesting comparisons of lengthy sitting days in the Senate's history.

PROROGATION AND A NEW SESSION OF PARLIAMENT

On 21 March 2016, the Governor-General issued a Proclamation:

- proroguing the Parliament from 5 pm on Friday, 15 April 2016, until 9.30 am on Monday 18 April 2016;
- appointing Monday, 18 April 2016, at 9.30 am as the time for the Parliament to meet for a new session; and
- summoning senators and members to meet then.

The Governor-General's power to do this comes from section 5 of the Constitution which authorises that officer to "appoint such times for holding the sessions of Parliament as he thinks fit, and may also from time to time, by Proclamation or otherwise, prorogue the Parliament, and may in like manner dissolve the House of Representatives". Note that it is traditional for such proclamations to specify the place of meeting but there is no constitutional authority for this.

Although the Houses are authorised by sections 49 and 50 of the Constitution to regulate their own proceedings, the commencement and termination of sessions of Parliament are determined by the executive government.

The terminology in section 5 reflects traditional parliamentary usage. A *Parliament* begins on the first day the two Houses meet after a general election for the House of Representatives or for both Houses. Parliament as a collective entity, comprising the Monarch, the Senate and the House of Representatives, comes into being when the Governor-General, under section 5, appoints the time for a session to begin. Within each Parliament, there may be several *sessions*. A new session is opened by the Governor-General at the time appointed under section 5 and begins on the first sitting day after a prorogation. A prorogation is a suspension of the Parliament (as a whole) until a future day and has the effect of bringing a session to an end without dissolving the House of Representatives or both Houses. Before the future day arrives, a time may be appointed for a new session to meet, the House of Representatives may be

dissolved for an election or a further prorogation might extend the recess until the next event occurs.

Once a session has begun, all matters regarding the days and times of meeting, the routine of business, any suspensions during a sitting and the time and duration of adjournments during a session are for each House alone to determine for itself.

The power of prorogation is a traditional prerogative of the Crown dating back centuries in Britain. As explained in *Odgers' Australian Senate Practice* (13th edition, pp 644-5):

The power of prorogation is inherited from the unwritten British constitution, and is closely associated with the monarchy. The monarch determines when the Parliament meets and may terminate its meeting by prorogation, which puts it out of session until summoned again, and quashes all legislative business pending before it. The historical rationale behind the power is that Parliament is only an advisory council to the monarch and meets only when the monarch requires advice. Much used by Stuart kings to dispense with rebellious parliaments, the power is now normally exercised on the advice of the prime minister. As with other royal powers it is generally accepted that there are circumstances in which advice could be refused. For example, if a prime minister were to lose a party majority in the lower house and were to advise a prorogation simply as a means of avoiding a no-confidence motion and of clinging to power, the sovereign would be entitled to decline to act on the advice. Leaving aside such circumstances, prorogation provides the executive government, the ministry, with a handy weapon to use against troublesome upper houses.

Prorogation has a rather uneven history at the Commonwealth level in Australia and a bad name in other jurisdictions (including NSW and Canada where recent prorogations have occurred in controversial circumstances). In the United Kingdom, and numerous other national and sub-national jurisdictions, however, it remains a routine and regular procedure.

Its early Commonwealth use was in accordance with traditional practices in Westminster. Parliament was prorogued before a dissolution of the House of Representatives and once or twice in each Parliament but, after 1925, for reasons unknown, the practice of proroguing before a dissolution was discontinued and not restored till 1993. The practice of proroguing within a Parliament was maintained sporadically until the end of the 23rd Parliament in 1961 but, since then, Parliament has been prorogued for a new session on only four occasions, two of which were to allow the Queen to open Parliament in person. Parliament was prorogued after the disappearance in December 1967 of Prime Minister Holt. The only other occasion was in 1969-70 when a late October election was followed by a single day's sitting before Christmas and a prorogation till the new year.

When making the proclamation on 21 March, the Governor-General also agreed to publish advice from the executive government which included detailed advice from the Attorney-General to confirm that the course of action recommended by the Prime

Minister was “soundly based in constitutional law and well-supported by a large and uniform body of constitutional precedents”. The [advice](#) noted 28 occasions on which Parliament had been prorogued and recalled since Federation. One especially pertinent example was the new session convened on 15 April 1914 following the election of the Cook Government in the previous year and its failure to get particular legislation through a hostile Senate. The Governor-General’s opening speech (quoted in paragraph 21 of the advice) noted the early recall of Parliament from a long recess in order to deal with urgent public business, before nominating legislation on two subjects (the prohibition of preference in Government employment and the restoration of provisions in electoral law for postal voting) that had failed in the previous session. The speech declared the Government’s intention to make further efforts to pass the bills in the current session.

In fact, the prohibition of preference bill was again rejected by the Senate and became the trigger for the first simultaneous dissolution in 1914. (Professor Helen Irving’s centenary lecture on the subject is published in [Papers on Parliament No. 63](#), July 2015.)

Effect of prorogation on Senate business

In almost 40 years since the last prorogation to commence a new session of Parliament, there have been many significant procedural developments in the Senate affecting major areas of Senate operations. The flagship legislative and general purpose standing committees are now provided for in standing orders, as are the hours of meeting and detailed routine of business, all of which were previously contained in sessional orders (which needed to be renewed at the commencement of each session) or were only loosely defined in standing orders. For example, under contemporary standing orders, the routine of business was minimal, comprising, on each sitting day, petitions, notices, questions (without and with notice), formal motions, postponement of business, and motions and orders of the day.

The impact of prorogation on Senate operations is described in the following paragraphs.

— (i) *The Senate*

The new session is opened by the Governor-General in accordance with standing order 1(2) and the Governor-General’s speech is given and responded to in accordance with standing orders 2 and 3.

Times of meeting and routine of business

After the formal opening and depending on the time of day and such other factors as whether there are condolences to be observed, business proceeds in accordance with the standing orders. For example, during the one-day session on 25 November 1969, the Senate suspended as a mark of respect following a condolence motion for a serving senator. On returning after the suspension, the Senate proceeded to questions and other business. The same pattern was followed, apart from the condolence motion, in the next session which began on 3 March 1970 following the prorogation.

At that time, the days (not dates) and times of meeting were set by sessional order (for example, 3 pm on Tuesdays and Wednesdays and 11 am on Thursdays) and the Senate adjourned on any day pursuant to a motion moved by a minister. Standing orders 55 and 57 together now prescribe in detail the hours of meeting and routine of business for any day. The routine of business now also contains numerous fixed times for particular business, such as question time at 2 pm each day. On the opening day of a session, these fixed times may be superseded by events required by standing order 1 to occur after the Parliament convenes at the time fixed by the Proclamation. On a normal opening day of a new Parliament, for example, with certain formalities conducted by Deputies in the morning and the Governor-General's speech in the afternoon at 2 or 3 pm, the opportunity for question time at 2 pm is usually superseded. An earlier starting time would leave in place such fixed-time business and the routine before and after it as provided by standing order 57 for that day.

Temporary and sessional orders (including for future sitting days)

A prorogation having terminated the sittings of the Senate, temporary or sessional orders for future sittings (and estimates hearings) are superseded but may be reinstated by further resolutions to restore or replace those sittings. Thus the current schedule for the remainder of 2016 will have no effect from the end of the eve of the new session and will need to be replaced to provide for sitting days and estimates hearings after 18 April 2016.

Business on the Notice Paper

Business on the Notice Paper, such as bills, notices of motion, contingent notices and questions on notice, lapse at the end of the eve of the new session.

Bills

Bills originating in the Senate and still in the possession of the Senate may be restored by motion on notice which may specify the stage at which they are to be restored (usually the second reading if that is where previous consideration finished). Bills received from the House of Representatives may be revived if the House of Representatives requests the Senate, by message, to resume its consideration of the bills, provided that a periodical election for the Senate or a general election for either House has not taken place between the sessions.

These rules, contained in standing order 136, are based on the principle that, in a bicameral legislature, a bill requires the agreement of the two assemblies as constituted at the time the bill is dealt with. A bill that has been passed by one House should not be taken to have been passed again by that House if its membership has changed.

The restoration of a bill to the Notice Paper at the stage it had reached before prorogation is an order for consideration of a bill at a particular stage. It is not the equivalent of resuming an interrupted debate. Therefore, debate begins afresh on the question before the chair. If the question is, "That this bill be now read a second time", any senator who spoke to that motion in the previous session may speak to the new motion, and the normal rules about speaking in reply also apply.

Notices of motion, including contingent notices

Notices of motion and contingent notices may be given again in the new session.

Questions on notice

Questions on notice may be resubmitted in the new session if senators wish to pursue questions asked in the previous session. Questions lodged after the prorogation (that is, after 5 pm on Friday, 15 April and before 9.30 am on Monday 18 April) will not need to be resubmitted and will appear in the Notice Paper in the new session.

Disallowance motions

By virtue of section 42(3) of the *Legislation Act 2003*, delegated legislation which is the subject of an unresolved motion for disallowance is deemed to be tabled on the first day of the new session following a prorogation, regardless of whether the prorogation precedes a general election. Any such delegated legislation will be recorded in the Journals of the Senate on the first day of the new session as having been deemed to be tabled on that day. Fresh notices may then be given.

The period for giving notice to disallow instruments tabled in the previous session continues to run in the new session until 15 sitting days have elapsed.

Notice Paper on the first day of a new session

The continuing nature of some Senate proceedings, including committees and their business, means that there will be a Notice Paper on the first day of a new session to record such business. For example, standing committees are appointed for the life of a Parliament and their references continue within a Parliament. The Notice Paper may record continuing orders of the Senate not yet included in the standing orders volume. There are likely to be orders of the Senate having effect at a time falling in the new session, for example, orders for documents and for the presentation of committee reports. For the purposes of section 57 of the Constitution, it is also important that the Notice Paper continues to include a record of bills negatived in the previous session.

— (ii) *Senate and other committees*

Senate standing committees

Committees appointed at the commencement of each Parliament are appointed for the life of the Parliament and continue in the new session, as do their references.

Most committees are authorised by the Senate to meet and transact business notwithstanding any prorogation of the Parliament, or to act or sit during recess, continue to operate during the period of prorogation and into the new session. This includes all committees established under chapter 5 of the standing orders except for the standing committees on Appropriations, Staffing and Security, Senators' Interests, and Selection of Bills which continue into the new session but are not specifically authorised to meet during prorogation.

Senate select committees

Select committees are authorised to meet and transact business notwithstanding any prorogation of the Parliament and they continue to operate during the period of prorogation until their reporting date. It was formerly the practice to reappoint select committees after a prorogation but, given developments in the committee system since the last prorogation within a Parliament (nearly 40 years ago), it would now be anomalous to regard the reporting timeframes set for select committees by the Senate to be dispensable by executive fiat.

Joint statutory committees

Members are appointed to joint statutory committees at the commencement of a Parliament and hold office until the dissolution or expiration of the House of Representatives. The Joint Committee of Public Accounts and Audit, the Public Works Committee and the Parliamentary Joint Committee on Intelligence and Security are empowered by their statutes to meet during a prorogation. Other statutory committees receive their powers from resolutions of the Houses and are not authorised to meet during a prorogation (Parliamentary Joint Committees on Law Enforcement, Australian Commission for Law Enforcement Integrity, Human Rights, Corporations and Financial Services).

Joint standing committees

Joint standing committees are appointed at the beginning of a Parliament and their members hold office until the dissolution or expiration of the House of Representatives. Joint standing committees are not authorised to meet and transact business during prorogation.

Joint select committees

Joint select committees are not authorised to meet and transact business during prorogation but should be regarded as continuing within the Parliament in which they were established.

Other matters

There are some other effects of prorogation on committees, particularly estimates committees, but few of substance.

Orders of continuing effect (such as the allocation of portfolios to committees) remain in effect till varied. As noted above, a prorogation is taken as superseding any orders for the forward program of estimates hearings and associated arrangements. Although legislation committees have power to meet notwithstanding any prorogation, the order setting the days for estimates hearings does not expressly require the committees to meet notwithstanding any prorogation and is therefore regarded as operating only if the session continues. This may require reinstatement of the arrangements for Budget estimates hearings.

Reports may be presented to the President during a prorogation period and authorised for publication. As the prorogation period on this occasion is over a weekend, reports are unlikely to be presented.

Estimates questions on notice are regarded as continuing and departments and agencies are advised that they should answer any such questions not answered at the time of prorogation.

LONG SITTING DAYS

A long sitting day may be measured by a House continuing to sit after midnight on any day. Although there have been 375 occasions since 9 May 1901 when the Senate continued to sit past midnight, the marathon sitting on 17-18 March 2016 was only the fifth such occasion during the current Parliament.

The “worst” Parliament for late sittings was the 36th Parliament (1990-93) when the Senate sat till after midnight on 50 occasions. This is almost twice the total for the “next worst” Parliament, the 31st (1978-80) with 26 sittings after midnight. In contrast, since the Senate adopted so-called family friendly hours with effect from 2 February 1994, there have been only 50 sittings after midnight in 22 years, the same number as in the three years of the Parliament preceding the Senate’s changes to its hours of meeting. These figures provide some perspective on the environment that led to the changes in 1994.

On sixty-two of the 375 occasions, the Senate was already debating the adjournment, meaning that the end was near. Leaving aside these occasions, apart from the Senate’s first and latest decades, when late sittings were rare, and the first half of the 1990s when they were relatively frequent, the Senate has averaged between two and four late sittings per year on a very rough calculation.

Ironically, the move to more family-friendly hours was achieved by sacrificing the breaks that had hitherto been part of the daily routine, leaving Monday as the only day when a dinner break of one hour is scheduled. The legendary marathon sittings of earlier times invariably included some long breaks in business. On 14 December 1916 and 14 March 1917, for example, the Senate sat for 30 hours and 59 minutes and 30 hours and 7 minutes, respectively, but these were not continuous sittings. Included in the total hours for each day were suspensions of nearly 10 hours in December 1916 and nearly 7 hours in March 1917, comprising breaks for dinner, supper after midnight, breakfast, lunch and dinner again, not to mention second breakfast and a lunch break stretching from 12.35 till 4 pm in December 1916 (probably on account of the need to wait for messages from the House) and a short break for afternoon tea in March 1917. In addition, the Senate did not meet till 3 pm on either day.

The filibuster by Senator Gardiner on the Commonwealth Electoral Bill 1918 on the night of 13-14 November 1918 led to the imposition of time limits on debates. The sitting day began at 3 pm on 13 November and concluded nearly 24 hours later at 2.36 pm the following afternoon. There were suspensions from 4.20 to 8 pm, midnight to

12.45 am and 1.02 to 2.30 am, but no more breaks till the Senate adjourned, perhaps with the aim of exhausting Senator Gardiner.

Major changes to electoral laws were achieved within normal hours in 1949 and 1983 but the Political Broadcasts and Political Disclosures Bill 1991 (another bill concerning controversial electoral matters) was the occasion for another marathon sitting. The second reading debate occurred overnight on 3-4 December 1991 with the Senate finally adjourning at 8.20 am on Wednesday 4 December, only to reconvene at 10 am for a normal Wednesday sitting (till just after 7.30 pm), followed by a 13 hour day on Thursday 5 December when the bill was finally passed under a guillotine. The usual 90 minute dinner break occurred on Tuesday 3 December.

Until last week, the most recent all-nighters, 7-8 December 2000 (9.30 am to 6.17 am the next morning) and 12 December 2002 (9.30 am to 10.23 am the next morning) also included dinner breaks and other suspensions of various lengths. The sitting on 17-18 March 2016 to finalise the Commonwealth Electoral Amendment Bill 2016 lasted for 28 hours and 56 minutes and appears to be unique in the Senate's history in being a continuous sitting without breaks of any kind. A record, perhaps, but not an enviable one.

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 can be found on the [Senate website](#).

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