



DEPARTMENT OF THE SENATE

PROCEDURAL INFORMATION BULLETIN

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For the sitting period 18 and 19 April 2016

The two sitting days that occurred on 18 and 19 April are already being labelled as historic, both for the manner of their convening and their contribution towards what now seems like an inexorable march towards a simultaneous dissolution under section 57 of the Constitution, the first since 1987. One historic element of the opening was that it did not include any of the usual extraneous elements not mandated by either the Constitution or the standing orders. It was therefore an exclusively parliamentary occasion.

OPENING OF A NEW SESSION OF THE 44TH PARLIAMENT

The previously announced prorogation of the Parliament (see Bulletin Nos. [302](#) and [303](#)) occurred at 5 pm on Friday 15 April and the Governor-General, acting under section 5 of the Constitution, summoned senators and members to a meeting of a new session at 9.30 am on Monday, 18 April.

Standing order 1(2) provides for the opening of a new session without an intervening general election. The Senate met at 9.30 am, the President took the chair and the Clerk read the proclamation proroguing and summoning the Parliament. After the President announced a vacancy in the representation of Western Australia arising from the resignation of Senator Bullock on 13 April and tabled the associated correspondence, the Usher of the Black Rod announced the arrival of the Governor-General who directed her to seek the attendance of members of the House of Representatives. When members of both Houses were assembled, the Governor-General delivered a short speech explaining why the Parliament had been summoned, which was to reconsider the bills to re-establish the Australian Building and Construction Commission (ABCC), already negatived once by the Senate on 17 August 2015. A second, identical version of the bills had been before the Senate for consideration at the time of prorogation, having been the subject of a short legislation committee inquiry which reported before the last sitting period (see Bulletin No. [300](#)).

The Governor-General then departed, leaving a copy of his speech with the President.

After a short suspension, the Senate reconvened for an ostensibly ordinary sitting day which began with the usual tabling of documents and proposals for committees to meet while the Senate was sitting. It is one of those ancient parliamentary customs that a house transacts some business of its own before its presiding officer reports receipt of a copy of the speech, thus demonstrating its independence from the executive government. Given the manifold ways in which the Senate has always demonstrated its independence from the executive government, this practice has never been adhered to by the Senate.

Instead, on 18 April, the President reported receipt of a copy of the speech and the Leader of the Government in the Senate, Senator Brandis, immediately moved the motion for an address-in-reply. Although the requirement for motions moved in the Senate to be seconded was removed in 1981, the custom of having a seconder for the address-in-reply is followed informally (and when the address-in-reply is adopted and presented to the Governor-General in person, both mover and seconder are part of the proceedings). On this occasion, the minister responsible for the contested legislation, the Minister for Employment, Senator Cash, seconded the motion and reserved her right to speak later in the debate. This was a break from the tradition that usually sees the address-in-reply moved and seconded by new senators, but it was symbolic of the particular purpose of the recall, to commit the Senate to action on the bills so that their fate could be determined for the purposes of section 57 of the Constitution.

Another traditional rule is designed to give precedence to consideration of the purposes expressed by the Governor-General for summoning the Parliament. Standing order 3(4) provides that no business other than that of a formal character may be transacted before the address-in-reply has been adopted. Formal business includes petitions, notices of motion, tabling of documents, questions (on notice and without notice), motions for the printing and consideration of documents or reports (but not debate on such motions), formal motions, motions fixing the days and hours of meeting, the appointment of standing committees, motions for leave of absence for senators (and on the basis of the last two, potentially other types of business of the Senate now specified in standing order 58), and matters of privilege. Based on earlier Presidents' rulings, it does not include matters of public importance or urgency motions. It also does not include substantive consideration of government or private senators' legislation, motions to take note of answers, senators' statements, general business motions or motions moved pursuant to standing order 74(5). Consequently, standing order 3(4) is usually suspended to allow such business to proceed normally and this practice was followed on 18 April.

LEGISLATION

As noted in Bulletin No. [303](#) (under 'Bills'), the standing orders of both Houses contain special procedures for the revival of bills in a new session, provided that a general election has not intervened. In the Senate, standing order 136 is 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. Standing order 136 provides that 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.

In anticipation of the arrival of such messages from the House, requesting the Senate to restore the ABCC bills, the Leader of the Government in the Senate was granted leave to move a motion to enable the messages to be dealt with immediately (rather than with the delay required by standing order 155) and, if the request from the House was agreed to, to provide for debate on the bills to recommence immediately.

The messages duly arrived and were considered and agreed to. Senator Cash moved that the bills be read a second time and debate proceeded (with interruptions at 2 pm for questions without notice and subsequent business provided for by standing order 57), until the motion was negatived just before the dinner suspension. Thus, the second leg of the further triggers for a simultaneous dissolution was clearly established with the ABCC bills joining the two other bills already meeting the requirements of section 57.

The Senate also dealt with a bill to abolish the previous government's Road Safety Remuneration Tribunal, passing it on 18 April under a limitation of debate imposed without dispute or debate.

Numerous private senators' bills were restored to the Notice Paper on 19 April under standing order 136, some with additional provisions dealing with their continued referral to committees. A motion from Senator Xenophon to restore a government bill originating in the House, dealing with parliamentary entitlements and to give it precedence over all Government business from 2 May, was negatived. The motion had included a suspension of standing orders to set aside the requirement for a message from the House. In another case, a successful motion on notice, a message was sent to the House of Representatives asking it to renew consideration of the Social Security (Administration) Amendment (Consumer Lease Exclusion) Bill 2015, an Opposition senator's bill passed in the previous session.

DAYS OF MEETING

A motion to provide for the days of meeting for the remainder of 2016, including special arrangements for the new Budget week commencing on 2 May, was moved by the Manager of Government Business, Senator Fifield, by leave, on 18 April. Among other things, the motion provided for the Senate to meet on Tuesday, 19 April and on other days during that and the following week, if required. The test of requirement was linked to a list of bills in the motion, drawn from the Government's published legislative program for the week. The motion was agreed to with an amendment to remove the sitting days in the week beginning 26 April.

In the event, further sitting days beyond 19 April were not required in accordance with the terms of the motion agreed to on 18 April but, when the possibility arose that the Senate might not reach certain business on the Notice Paper before the adjournment was proposed on 19 April, an absolute majority of senators wrote to the President under standing order 55 seeking a meeting of the Senate on 20 April. The letter was withdrawn when the hours of meeting on 19 April were extended until the necessary business had

been dealt with (see below).

NEW COMMITTEE INQUIRIES

Among the many notices of motion given on 18 April were notices for two references to the Finance and Public Administration References Committee for inquiries into:

- outcomes of the recent COAG meeting with particular reference to funding for schools and hospitals, and taxation; and
- oversight of electoral funding and disclosure regimes, and particularly of associated entities of political parties.

Both have reporting dates of 4 May. A controversial feature of the second inquiry was the direction to Senator Sinodinos to appear before the committee to answer questions. While standing order 177(3) provides for the Senate to order a senator to appear before a committee and give evidence, the usual practice is envisaged by standing order 177(2) which contemplates that a committee will invite a senator to appear before it. If the senator declines the request, the committee reports that action to the Senate, because a committee has no disciplinary powers of its own. In any case, it would not be appropriate for a subsidiary body such as a committee, to have any coercive powers over members of the plenary body. Thus, only the Senate can direct its members. This step, which appears to be without precedent, may have been taken in view of the short time available to hold such an inquiry before the expected simultaneous dissolution.

Both inquiries were agreed to on 19 April. Also agreed to was an Opposition motion to provide for two days of Budget estimates hearings on 5 and 6 May, with committees to report by 11 May. The motion varied the earlier order setting out the days of meeting by removing 5 May as a sitting day.

STANDING ORDER 74(5)

On both sitting days, Senator Carr used the procedures available under standing order 74(5) to pursue overdue answers to questions on notice relating to CSIRO from the additional estimates hearings. Although questions on notice lapsed before the new session, estimates questions are regarded as continuing, meaning that standing order 74(5) continued to provide a remedy for late answers at the beginning of the new session.

In relation to questions on notice, the Senate agreed to a motion on 19 April applying standing order 74(5) for a limited period to overdue answers to questions on notice asked in the previous session.

VARIATION TO THE HOURS OF MEETING

The use of standing order 74(5) on 19 April threatened to prevent the Senate getting to the many notices of motion to be determined that day when there was an attempt by government senators to extend or “filibuster” the debate. The threat was averted when

the Manager of Opposition Business, Senator Moore, successfully moved the closure on Senator Carr's motion to take note of the minister's failure to provide either the answers or an explanation. This was followed by a successful suspension of standing orders to allow a motion to be moved to extend the hours of meeting until all the items listed under discovery of formal business had been moved and determined. The adjournment was finally proposed around 8 pm after many divisions were required to determine the business before the Senate, and the request by an absolute majority of senators for the Senate to meet on 20 April was withdrawn.

OTHER MATTERS

Motions determined on 19 April included motions to support the establishment of a royal commission into the banking and financial services sector (successful) and a broad anti-corruption body (unsuccessful). Orders for the production of documents were also agreed to as follows:

- for a copy of the Research Infrastructure Review (due 20 April, Minister's response presented out of sitting on the due date, declining to produce the report because it contained opinions, advice and recommendations that were part of the deliberative processes of Cabinet);
- for further documents relating to the funding of the Perth Freight Link and a list of all other National Partnership Agreement for Infrastructure projects over \$100 million that have received federal funding without a published business case or full cost-benefit analysis; and
- for various documents relating to contracts, subcontracts, due diligence or procurement processes involving Broadspectrum (formerly known as Transfield Services) and Wilson Security, in relation to operations on Manus Island and Nauru.

A further motion, moved by Senator Xenophon and agreed to, rehearsed the history of attempts to obtain certain modelling in relation to the submarine tender process and the grounds advanced for not providing the information, before rejecting the public interest immunity claim and reiterating the order.

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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