



DEPARTMENT OF THE SENATE

PROCEDURAL INFORMATION BULLETIN

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For the sitting period 19 — 29 November 2012

LEGISLATION

In the last sitting fortnight for the year, numerous pieces of legislation were passed but none were subjected to protracted proceedings, major controversy or disagreement with the House of Representatives. Some use was made in the second week of motions to limit the time for debate on specific bills (the procedure otherwise known as a guillotine) but by the close of business on 29 November, the scheduled legislative program had been completed.

A pair of appropriation bills to appropriate additional money to implement the report of the Expert Panel on Asylum Seekers was dealt with on 19 November. A second reading amendment moved to the No. 2 bill (the bill which, under section 53 of the Constitution, is not concerned with the ordinary annual services and is therefore amendable by the Senate) called for the appropriation to take effect only after certain other steps had been taken (such as imposing a 12-month time limit on detention on Nauru or Manus Island). Even if the amendment had succeeded it would have been of hortatory effect only. Therefore, there were neither procedural nor constitutional reasons for it to be confined to the second bill in the package.

The Freedom of Information Amendment (Parliamentary Budget Office) Bill 2012 was agreed to as non-controversial legislation on 22 November. It extends the exempt status of the office to apply to documents held by executive agencies that might disclose the existence or nature of information sought by the PBO to respond to confidential requests from members and senators. The bill was regarded as closing a loophole that may have undermined the confidence of members and senators in the ability of the PBO to maintain the confidentiality of their requests.

Also passed during the time for consideration of non-controversial legislation on 22 November was the package of bills to apply measures to regulate judicial conduct, including the Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Bill 2012. The bill had been amended by the Government in the House of Representatives to clarify several matters, as recommended by the Senate Legal and Constitutional Affairs Legislation Committee (see [Bulletin No. 265](#)).

The Low Aromatic Fuel Bill 2012, introduced by Australian Greens Senator Siewert, was debated during the time for consideration of private senators' bills on 22 November and debate was concluded under a limitation of time on 27 November. The bill places further requirements on petrol suppliers to supply low aromatic fuel in an attempt to further restrict opportunities for petrol-sniffing, particularly amongst Aboriginal and Torres Strait Islander peoples. While the bill relied on the corporations power under section 51(xx) of the Constitution, the explanatory memorandum also argued the case for considering the bill as a special measure under section 51(xxvi). Government amendments greatly strengthened this basis for the bill but the impact

of the bill is nonetheless confined to constitutional corporations, and not partnerships or sole traders in the petrol supply chain. The measure is likely to join the select number of private members' and senators' bills to reach the statute books, a number which has been boosted during the current Parliament under minority government.

The Privacy Amendment (Enhancing Privacy Protection) Bill 2012 was extensively amended on 27 November in accordance with recommendations of the Legal and Constitutional Affairs Legislation Committee. The Government continued to table addenda to explanatory memoranda to address issues raised by Senate committees, including the Scrutiny of Bills Committee. Numerous other committee reports contributed to the improvement of legislation during the period.

The President introduced the Parliamentary Service Amendment Bill 2012 on 28 November, adding to the exclusive collection of private senators' bills introduced by the President of the day. The bill reflects, in so far as is applicable, the terms of the Public Service Amendment Bill 2012 which responds to various reform proposals in *Ahead of the Game: Blueprint for the Reform of Australian Government Administration*.

A motion was moved on 22 November to allow the Renewable Energy (Electricity) Amendment (Excessive Noise from Wind Farms) Bill 2012 to be considered during the time for consideration of private senators' bills on 29 November before the Community Affairs Legislation Committee reported on the bill. Normally, when a bill is referred to a committee, it becomes an order of the day for the future, after the committee has reported. In the event, this special arrangement was not necessary as the committee presented a substantial report on the bill on 28 November. The majority report recommended that the bill not be passed while its sponsors, Senators Madigan and Xenophon, attached a dissenting report expressing the contrary view. Debate on the bill was adjourned.

SELECTION OF BILLS COMMITTEE REPORT AMENDED

The adoption of recommendations made in reports of the Selection of Bills Committee is now the principal means by which bills are referred to committees. Amendment of motions to adopt reports to add referrals, or vary details such as reporting dates, is not uncommon. Rather more complex proceedings were involved on the National Gambling Reform Bill 2012 and two related bills. On their introduction to the House of Representatives, the bills had been referred to the Joint Select Committee on Gambling Reform, pursuant to its resolution of appointment. The Selection of Bills Committee had recommended that the bills be referred to the Finance and Public Administration Legislation Committee for a short inquiry, but the motion to adopt the report included a variation to refer the bills instead to the Community Affairs Legislation Committee. To this motion, the Opposition moved an amendment to extend the reporting date and send the bills to the originally proposed committee. The amendment was lost and the bills were referred to the Community Affairs Legislation Committee.

In the meantime, the Joint Select Committee on Gambling Reform presented its report on the bills out of sitting on 23 November recommending that the bills be passed, as

well as making several policy recommendations. The Community Affairs Legislation Committee reported on 28 November, referring to the substantial report on the bills by the Joint Select Committee and endorsing its conclusions and recommendations but including more substantial dissenting reports from Opposition senators and Senator Xenophon. The Community Affairs Legislation Committee did not make a separate call for submissions. The bills were amongst the last to be dealt with on 29 November, immediately on their receipt from the House, and were agreed to without amendment (although they had been amended in the House).

BILL REFERRED AGAIN TO A COMMITTEE

The potential pitfalls of multiple referrals were illustrated in relation to another bill reported on during the period. The Regulatory Powers (Standard Provisions) Bill 2012 was referred by the House of Representatives to the Parliamentary Joint Committee on Law Enforcement, and by the Senate to the Legal and Constitutional Affairs Legislation Committee. The latter committee resolved not to call for submissions in view of the inquiry by the first-mentioned committee. The bill was also considered and reported on by the Scrutiny of Bills Committee and the Parliamentary Joint Committee on Human Rights. The [Scrutiny of Bills Committee](#) noted that the bill contained standard regulatory provisions, including the use of coercive powers, to be exercised by Commonwealth agencies once applied by new – or amendment of existing – legislation. The explanatory memorandum contemplated that the provisions could be applied in part, depending on the circumstances, and, in any case, the application of the provisions to specific legislation would be subject to further parliamentary scrutiny. Nonetheless the committee raised the general question of the appropriateness of enacting such legislation at all, presumably on the basis that the Parliament was being asked to pass legislation with unknown application and effect.

When the PJC on Law Enforcement reported to the Senate, it recommended that the bill be referred again to the Legal and Constitutional Affairs Legislation Committee for close consideration of issues raised by the bill, potentially including constitutionality. The PJC also recommended that the legislation committee have power to consider and use the evidence submitted to the PJC. The Senate adopted the recommendations with a reporting date in March next year. The Senate will no doubt learn more about this unusual bill.

DISALLOWANCE

A set of Migration Amendment Regulations, relating to visa classes, was disallowed on 21 November, with the Opposition and Australian Greens combining to defeat it.

Following the tabling of the long-awaited Murray-Darling Basin Plan on 26 November, Senator Hanson-Young gave notice of a motion to disallow it. The motion was debated on 28 November and negatived. Either House can disallow a legislative instrument and two motions to disallow the plan were also negatived in the House of Representatives on 29 November.

A notice for disallowance of an instrument made under the *National Health Act 1953*, in relation to the pricing of a particular chemotherapy medication, was withdrawn on 29 November after apparently fruitful consultations.

ORDERS FOR PRODUCTION OF DOCUMENTS

The Government responded in full on 28 November to an order agreed to on 1 November for a report and documents relating to the Northern Territory Emergency Response (see [Bulletin No. 268](#)). The response was presented for tabling on the due date (27 November) but other business superseded its tabling on that day.

Further to a statement made on 14 August (see [Bulletin No. 265](#)), the Government produced a document in response to the order of the Senate of 19 June 2012 for the production of legal advice prepared in relation to the Murray-Darling Basin Plan. The statement had indicated that the responsible minister would table summary advice regarding compliance of the Basin Plan with the *Water Act 2007*, and that the summary advice would be prepared for publication and therefore – it was claimed – distinguishable from other legal advice (which is “never” published: see [Bulletin No. 242](#)). Summary advice had also been tabled in relation to the Draft Basin Plan.

ANOTHER JOINT SELECT COMMITTEE

If one had to identify a defining procedural characteristic of the 43rd Parliament, it would surely be the proliferation of joint committees established to examine particular issues. As well as the new joint statutory committee to monitor the compliance of legislation with specified international human rights instruments, and a new joint standing committee on the National Broadband Network, there have been joint select committees established on the following matters: gambling reform, Australia’s immigration detention network, the Christmas Island tragedy, the Parliamentary Budget Office, cyber-safety, Australia’s Clean Energy Future legislation and the constitutional recognition of local government. The tenth such committee for the Parliament, the Joint Select Committee on the Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, was initiated in the House of Representatives on 27 November and agreed to by the Senate on 28 November. Its membership was appointed the following day.

The committee has an ongoing brief to inquire into and report on steps towards a successful referendum on the issue but, in the meantime, is to report by 30 January 2013 on the Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012. It has been given an extensive list of matters to consider in undertaking these tasks.

The committee has an unusual composition in having a larger number of senators (5) than members of the House of Representatives (3), contrary to the two currently recognised principles concerning the composition of joint committees. On the one hand, the Houses should contribute equal numbers of members to a joint committee on account of their equal constitutional position. Indeed, President Kingsmill, in 1929, insisted that he could not serve on a joint committee upon which the two branches of the legislature were not equally represented, a response to the House appointing more members than the Senate to its Library and House Committees which traditionally meet jointly. (The House discharged the additional members: see *Annotated Standing Orders of the Australian Senate*

under [SO 20](#).) On the other hand, there have also been examples of joint committees having more House members than senators in recognition of the larger size of the House. Neither principle, it seems, has informed the membership of the new joint select committee which may be seen as an acknowledgement of senators' prodigious reputation for committee work. Other unusual features of the committee will be considered in future bulletins.

EXTENDED HOURS

As is usual at this time of year, the Senate agreed to extended hours in both weeks to provide adequate time to consider the Government's legislative program, and a significant number of bills were exempted from the requirements of standing order 111, known as the "cut-off", to enable them to be considered during this period of sittings. Agreement was not always amicable and the closure was used on a number of occasions.

PRIVILEGE

On 20 November, the President made a statement and accorded precedence to a notice of motion to refer to the Privileges Committee allegations of the unauthorised disclosure of the chair's draft of the report of the Select Committee on Electricity Prices, presented during the previous sitting period. Several years ago, the Senate adopted procedures to require committees to undertake their own investigations of unauthorised disclosures and to consult with the Privileges Committee before raising them as matters of privilege. While the procedures continue to declare unauthorised disclosure of committee proceedings as a potential contempt, they provide committees with guidance on assessing such matters before raising them as matters of privilege. In this case, while the select committee had carried out preliminary inquiries in an attempt to explain the disclosure, it ceased to exist once its final report had been presented and was therefore unable to take the next steps envisaged by the resolution. In these circumstances, there was no remedy other than the contempt jurisdiction to pursue the matter. In agreeing to the motion on 21 November as a formal motion, the Senate also gave the Privileges Committee the power to access the relevant records of the select committee which were now in its custody.

APPROPRIATIONS AND STAFFING COMMITTEE REPORT

The Appropriations and Staffing Committee presented a report on 26 November recommending an amendment to standing order 19 to empower the committee to meet with a similar committee of the House of Representatives for the purpose of providing high-level oversight of the provision of information and communications technology services to the Parliament. The move resulted from the recent Roche review commissioned earlier in the year by the Presiding Officers to recommend ways to achieve a more strategic approach to ICT services. The recommendation was adopted on 27 November.

SENATORS' INTERESTS COMMITTEE REPORT

After receiving another brief extension, the Senators' Interests Committee, on 29 November, presented its report on a code of conduct for senators. The consideration of such a code and an office of ethics adviser or integrity commissioner had been a feature of the agreements on parliamentary reform entered into at the beginning of the current Parliament. The committee, in a carefully balanced [report](#), was not convinced that an aspirational, principles-based code would necessarily improve perceptions of parliamentarians and their behaviour, but it made a number of useful suggestions about the structure of a possible code should the Senate decide to adopt one.

The committee also tabled its regular update on senators' interests declared since the last update tabled in June. The register is now online.

COMMITTEE REPORTS

Numerous other committee reports were presented during the period and other significant inquiries received extensions. Committees also received new terms of reference. The report of the Finance and Public Administration Legislation Committee on the [Department of Parliamentary Services](#) was presented on 28 November and made sweeping recommendations across a range of matters from heritage management to workplace culture. In one recommendation, the committee proposed that DPS should have closer parliamentary oversight, with the Senate Appropriations and Staffing Committee and the House Appropriations and Administration Committee meeting jointly for that purpose. Other reports were presented on the adequacy of the [Newstart](#) allowance for jobseekers, the [post-GFC banking sector](#), and the [Foreign Investment Review Board national interest test](#) (interim report). Also tabled was the regular volume of committee correspondence with ministers which records the scrutiny of delegated legislation by the Regulations and Ordinances Committee.

The President's biannual [report](#) on government responses outstanding to Senate committee reports was tabled on 29 November, the government's response to the June report having been presented the day before.

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 may be reached through the Senate home page at <http://www.aph.gov.au/About/Parliament/Senate>.

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