



DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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PROPOSED CENSURE

While the Ides of March proved an unfortunate day for Julius Caesar, it was on the March equinox that the latest dramatic events occurred here when a senior minister called for a spill of leadership positions in the Government. When the Opposition in the House of Representatives was unable to secure the absolute majority required for a suspension of standing orders to enable a motion of no confidence to be moved, the Opposition in the Senate moved to suspend standing orders to enable a motion to be moved declaring no confidence in the Government's ability to govern itself. A similar motion had been moved in February, by leave, in relation to the Government's handling of the mining tax (see [Bulletin No. 271](#)).

While a suspension of standing orders without notice also requires an absolute majority in the Senate, a suspension moved with notice requires only a simple majority. Party leaders and independent senators therefore have contingent notices on the [Notice Paper](#) providing for motions to suspend standing orders to be moved, contingent on a particular circumstance. The suspension motion moved on 21 March was lost and the censure motion did not therefore proceed. Subsequently, the spill of positions was reportedly uncontested, leaving all current officeholders in position.

LEGISLATION

In the last sitting fortnight before the May Budget, the Senate worked through numerous bills, both expected and unexpected. Debate concluded on the Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012 which is a precursor to a proposed constitutional referendum on the issue. Having examined and reported on the bill (see [Bulletin No. 270](#)), the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples will continue to work towards encouraging consensus by consulting widely on the specific proposals.

The Completion of Kakadu National Park (Koongarra Project Area Repeal) Bill 2013 was passed during the time for non-controversial legislation on 14 March, bringing to an end an exercise of parliamentary scrutiny of epic duration involving unproclaimed provisions (see [Bulletin No. 271](#)).

Also passed, on 21 March, was the Australian Capital Territory (Self-Government) Amendment Bill 2013 which devolves to the Legislative Assembly of the ACT the right to determine the size of the Assembly by enactment agreed to by a two-thirds majority of the Assembly.

The additional appropriation bills were agreed to without amendments or requests for amendments on 18 March, after which debate began on the National Disability Insurance

Scheme Bill 2013. This bill was the subject of a major and detailed [report](#) by the Community Affairs Legislation Committee, tabled on 13 March, and which made 29 recommendations for amendments to the bill or in relation to the scheme. The committee noted that its inquiry was made more difficult by lack of access to the draft subordinate legislation which provided much of the detail of the scheme. The committee observed that, as a matter of good public policy, draft subordinate legislation should be released as soon as possible after the introduction of a bill seeking to institute significant national reforms. Numerous amendments were moved to the bill, including government amendments responding to the committee's recommendations. Although the scheme is an extensive one, it is unfunded. The bill provided for subsequent appropriation of the necessary funds. Thus, without an appropriation to affect, there could be no basis for any amendments to the bill to be moved as requests, even those that appeared to widen eligibility for the scheme.

In order to ensure the completion of proceedings on the NDIS Bill and the package of broadcasting bills, as well as to provide for appropriate consideration of a motion in relation to the apology to those affected by forced adoption policies (see below), the Government moved, on 20 March, a motion to vary the hours of meeting and routine of business on 20 and 21 March and to implement a time management motion for consideration of the bills, otherwise known as a guillotine. The arrangements were hotly disputed and putting them in place consumed most of the time that would otherwise have been available for consideration of the remaining amendments to the NDIS Bill (proceedings on which, up to that point, had been a model of legislative scrutiny). The bill was passed with amendments moved by the Government and Australian Greens.

BROADCASTING LEGISLATION

A package of legislation proposing various changes to media policy was the unexpected item for the period. Announced on 13 March and introduced the following day, the bills were presented as an "all or nothing" package which had to be passed by both Houses before the end of the fortnight. In referring the provisions of the bills to the Environment and Communications Legislation Committee, the Selection of Bills Committee was unable to agree on a reporting date. A date of 17 June was set by way of amendment to the motion to adopt the committee's report, but it subsequently transpired that the legislation committee intended to meet the government's desired deadline. Two solid days' of public hearings were held on 18 and 19 March, attended by a broad range of media industry proprietors and senior managers, and the committee planned to finalise and present its report early on 20 March.

The committee's [report](#) was delayed till later that day when leave was refused to move a motion to allow the committee to meet during the sitting of the Senate otherwise than in accordance with standing order 33(1), to enable it to adopt the majority report. The meeting then apparently occurred during the brief dinner suspension and the majority report was tabled when the Senate resumed. A dissenting report was tabled by leave later in the proceedings and a motion moved to have it printed with the majority report.

On 14 March, both Houses had agreed to establish yet another joint select committee to inquire into and report (by 17 June) on potential areas for further reform of Australia's broadcasting legislation, including some areas covered by the bills. That committee also held a public hearing on 18 March. There was much criticism of the most controversial aspect of the package, the establishment of a Public Interest Media Advocate, particularly from the affected industry which characterised the package as the greatest interference with freedom of speech since convict days, and comparable with levels of censorship practised by totalitarian regimes. There was also criticism of the attenuated process for consideration of the bills, including of reportedly rushed Cabinet and caucus deliberations on the package the day before its introduction. The two uncontroversial bills were debated and agreed to under a limitation of time on 20 March. The Senate was not able to consider whether the hyperbole about the remaining bills was justified, as they were not proceeded with in the House when negotiations failed to attract the necessary support.

APPROVAL OF AN INSTRUMENT OF DELEGATED LEGISLATION

There are some unusual provisions for scrutiny of delegated legislation spread throughout the Commonwealth statute books. In addition to disallowance, some schemes provide for positive approval of instruments by each House of the Parliament before they can take effect. One such instrument, made under subsection 10B(1) of the *Health Insurance Act 1973* in relation to the extended Medicare safety net, was approved on 13 March. For background, see Bulletin Nos. [267](#) and [235](#).

APOLOGY TO THOSE AFFECTED BY FORCED ADOPTION POLICIES

On 21 March the Leader of the Government in the Senate presented the government response to the report of the Community Affairs References Committee on forced adoption policies. Among other things, the report recommended a national apology to those people affected by the former policies, together with practical measures to address the harm suffered by those people. The apology in the Great Hall of Parliament House and the announcement of practical measures preceded a motion moved in each House embodying the text of the apology. In debate on the motion, senators commended the work of the committee and cited it as an example of the parliamentary process at its best in working on behalf of the community.

COMMITTEE REPORTS

Among numerous committee reports tabled during the period were the reports on Annual reports (on 14 March) and on the additional estimates (on 19 March), reports presented by all legislation committees. The report of the [Finance and Public Administration Legislation Committee](#) on annual reports commented on the over-engineering of many annual reports by inclusion of unnecessary descriptive material or 'interest pieces', photographs of happy staff at social functions and high design features not appropriate to the purpose of informing the Parliament and the public. Estimates reports of the [Economics Legislation Committee](#) and the [Community Affairs Legislation](#)

[Committee](#) included commentary on a few instances of witnesses offering grounds for not answering questions and on the committees' responses. As noted in several of the reports, this territory is covered by the Senate's resolution of 13 May 2009 which sets out the process to be followed in such circumstances.

The Rural and Regional Affairs and Transport References Committee, on 13 March, presented the final report on its blockbuster inquiry into the management of the [Murray-Darling Basin](#), an inquiry that has proceeded in concert with the process to develop a Basin Plan, a process now finalised with the conclusion of the disallowance period. The committee took evidence from hundreds of witnesses and presented a unanimous report with additional comments by Senator Xenophon.

An important [report](#) was presented by the Legal and Constitutional Affairs Legislation Committee on the provisions of the Regulatory Powers (Standard Provisions) Bill 2012. For the background to the referral of this bill, see [Bulletin No. 269](#). The bill contains a set of standard regulatory provisions. These may be applied to agencies on a case by case basis, either through new legislation or amendment of existing legislation, including by legislative provisions which create a power to make regulations triggering the regulatory provisions. In other words, the Parliament may approve the potential for the provisions to be triggered but will not have direct approval of their actual triggering, other than through the power to disallow the regulations. While noting, and supporting, that the purpose of the bill was to simplify and standardise the law through the application of model provisions, the committee nonetheless expressed itself to be "extremely concerned" at the wide range of agencies and circumstances to which the provisions might be applied. Among its recommendations, the committee urged that the bill be amended to remove the power to trigger its provisions by regulation. Furthermore, it recommended that explanatory memoranda explicitly declare and explain the triggering of the provisions in each case in which they are to be applied, and the reasons why they are considered appropriate. The report maps out a parliamentary Rubicon in stating that comprehensive parliamentary scrutiny is required for any proposal for an agency to exercise coercive regulatory powers, to ensure that the powers are appropriate for the purpose. Applying such powers by regulation, which may not receive the same level of scrutiny, is not acceptable.

Recommendations calling for additional transparency were also made by the [Rural and Regional Affairs and Transport Legislation Committee](#) in relation to the controversial Australian Sports Anti-Doping Authority Amendment Bill 2013, but the bill was not reached before the Senate rose for the Easter adjournment.

For details of the many other reports tabled, see the [Senate Daily Summary](#).

PROPOSED INSTRUCTION TO A COMMITTEE

One of the new inquiries referred during the period to the Rural and Regional Affairs and Transport References Committee was into an Auditor-General's report on the administration of the voluntary exit grants program for the Tasmanian forest industry. On 20 March, Senator Milne gave notice of an instruction to the committee to take evidence in Tasmania for the inquiry. The motion was defeated on 21 March. Instructions requiring

committees to hold hearings in specified locations are not unusual, although they are not frequently employed.

CHANGES TO STANDING AND OTHER ORDERS

The Senate adopted the Procedure Committee's *First report of 2013* on 12 March, thereby amending standing order 57, providing guidance on the assessment of electronic petitions for conformity with the standing orders, and agreeing to a trial of new speaking times for the open-ended adjournment debate on Tuesdays. The first two trials of the last procedure indicated that the debate occupied less time overall while allowing comparable numbers of senators to speak.

ORDERS FOR THE PRODUCTION OF DOCUMENTS

The annual report to the Senate by the Australian Competition and Consumer Commission on anti-competitive practices in the health insurance industry was tabled on 21 March. This year's report, the 14th since the Senate order was initiated in 1999, focuses on non-recognition by health funds of providers of certain types of allied health care while providers of similar services are recognised. This has been a significant cause of complaints to the ACCC.

An order, agreed to on 20 March, on the motion of Senators Madigan and Xenophon, required the minister representing the Minister for Immigration and Citizenship to produce information and statistics about people in immigration detention, particularly children. The order was complied with on 21 March.

Another order, agreed to on 20 March, for production of the Borthwick review of Commonwealth fisheries management legislation, is due on 8 May 2013.

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/AboutParliament/Senate>.

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