



DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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For the sitting period 17 to 19 November and 24 November to 4 December 2014 and Supplementary Budget Estimates on 20 November 2014

The final sitting period for the year was extended to coincide with ceremonial addresses to the House of Representatives by the Prime Ministers of the United Kingdom and India and the President of the People's Republic of China (see [Bulletin No. 287](#)). A day of supplementary budget estimates hearings, missed owing to the death of the Hon. E G Whitlam, was rescheduled for 20 November. During the period, there were numerous disruptions for suspensions of standing orders or other unscheduled business, and the year concluded with extended hours to consider a migration bill enacting new arrangements for temporary protection visas.

LEGISLATION

Amongst the bills dealt with during the period were several bills which were negatived at various stages. The Australian National Preventive Health Agency (Abolition) Bill 2014 and the controversial Higher Education and Research Reform Amendment Bill 2014 were both negatived at second reading, on 25 November and 2 December respectively. A package of bills to implement the Business Services Wage Assessment Tool Payment Scheme was negatived in committee of the whole on 24 November after the committee had agreed to amendments and requests for amendments to the main bill. It has often been said that it is not logical for a bill that has been amended by a committee of the whole to be negatived by the same body but this has happened on a number of occasions. Agreement to request amendments to one of the bills may have introduced complications into the process which were resolved by negativing the bills at an earlier stage than might otherwise have occurred. This is because the third reading of a bill to which requests have been agreed does not take place until the requests have first been placed before the House of Representatives for decision and the decision has been communicated to the Senate, thus involving an extra journey between the Houses.

Agreement by the House of Representatives to amendments made by the Senate to the Carbon Farming Initiative Amendment Bill 2014 (see [Bulletin No. 287](#)) was reported on 25 November.

Unusual proceedings occurred in relation to the Omnibus Repeal Day (Spring 2014) Bill 2014, the second of the Government's biannual spring cleaning of the statute book, ostensibly to cut "red tape". The bill was essentially a statute law revision bill, repealing various Acts and making amendments across Commonwealth statute law. When the Government moved on 1 December to rearrange business for the remainder of the day, the Opposition moved an amendment to replace the proposed program with consideration of the Omnibus Bill, giving it precedence over other government business till determined.

The amendment was agreed to and the Omnibus Bill was called on for debate. The Opposition's intention was to use the bill as a vehicle to which to attach amendments to the *Public Governance, Performance and Accountability Act 2013* requiring the controversial naval submarine replacement project to be determined by open competitive tender, thereby allowing Australian companies, such as the Australian Submarine Corporation based in South Australia to tender for the work. Many points of order were taken on relevance but the wide coverage of the bill provided no basis on which to limit the matters that could be dealt with for the reason that they were not relevant to the bill. Apart from constitutional restrictions, relevance is the only test provided by the standing orders to limit the matters that may be dealt with. Acrimonious debate occurred about the alleged breach of an agreement about the program for the remainder of the sittings that this move represented. The Opposition amendments were agreed to, along with Australian Greens amendments relating to environmental measures covered by the bill. The bill passed with amendments on 2 December.

An attempt to suspend standing orders to bring on the newly introduced private senator's bill, the Defence Amendment (Fair Pay for Members of the ADF) Bill 2014 for debate and give it precedence over government business failed on 3 December.

The Government gave notice of a motion on 3 December for the Senate to continue meeting until it had dealt with a specified list of bills. By the following day, the list had reduced to one bill, the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014. Denied leave to amend the motion, the Government moved a new motion pursuant to a suspension of standing orders after question time on 4 December. That motion set aside scheduled business to deal with the migration bill only and for the Senate then to adjourn. Lengthy proceedings on the bill ensued, including a committee stage to deal with a large number of circulated amendments. Government amendments and one Opposition amendment were agreed to by the Senate, and subsequently by the House of Representatives on 5 December.

DISALLOWANCE

The Fair Entitlements Guarantee Amendment Regulation 2014 (No. 1) was disallowed on 17 November. Notice of a motion for the disallowance of the Financial Management and Accountability Amendment (2014 Measures No. 6) Regulation 2014, given by the Chair of the Regulations and Ordinances Committee was withdrawn on 19 November (the last day for resolving the matter), after the committee received from the minister the information it had requested about the authority for certain expenditure specified by regulation under section 32B of the *Financial Framework (Supplementary Powers) Act 1997* (the mechanism put in place to overcome the impact of the High Court's decision in the *Williams* (No. 1) case).

On 19 November, the Opposition moved to suspend standing orders to vary the hours of meeting and routine of business to bring forward debate on the proposed disallowance of the Corporations Amendment (Streamlining Future of Financial Advice) Regulation 2014. After a morning spent on procedural manoeuvres, including various amendments, the substantive motion was unresolved by the time the Senate proceeded to other

scheduled business at 12.45 pm. During question time, the Opposition again moved to suspend standing orders to put different arrangements in place, involving the expedited consideration (without amendment or debate) of a motion to vary the hours of meeting and routine of business to consider the disallowance of the FOFA regulations. On this occasion, the manoeuvres succeeded and the motion to disallow the FOFA regulations was called on, debated and agreed to.

After the Senate disallowed the FOFA regulations (on the third attempt – see Bulletin Nos. [284](#) and [286](#)), there was broad agreement for the remaking of part of the regulations providing for the grandfathering of certain financial commission arrangements. The *Legislative Instruments Act 2003* provides that a regulation or provision of a regulation the same in substance as a regulation or provision of a regulation that has been disallowed by a House may not be remade within 6 months unless the House concerned rescinds the disallowance motion. Such a motion is not technically a rescission motion which has the effect of undoing an action as if it had never been taken. It is a motion with prospective effect only, permitting the remaking of the regulation or provision. For the avoidance of doubt, such a motion was agreed to on 27 November to allow the remaking of the grandfathering provisions.

CENSURE OF A MINISTER

Censure motions in the Senate are relatively rare but the Opposition successfully moved to suspend standing orders during question time on 26 November in order to censure the Minister for Defence, Senator Johnston, for comments made during question time the previous day about the capability of the Australian Submarine Corporation. The machinery motion to bring on the censure motion provided for the latter to be determined without amendment, an unusually draconian measure that had the effect of limiting the Senate's options and forcing a particular conclusion (or no result at all, rather than a possible compromise motion achieved by amendment). A censure motion expresses the view of a majority of the Senate but has no legal consequences.

The censure motion followed extensive debate on a motion to take note of an exculpatory statement made by the minister at the commencement of business on 26 November.

URGENCY MOTIONS/MATTERS OF PUBLIC IMPORTANCE

Matters to be raised under standing order 75 were withdrawn on two occasions during the sitting period (26 November and 2 December), given the pressure of other business.

VOTING AND DIVISIONS

An unusual vote occurred on the motion for the second reading of the Family Tax Benefit (Tighter Income Test) Bill 2014, a private senator's bill considered on 4 December. Although there were two voices calling for the division as required by standing order 100(1), when the tellers were appointed, it was apparent that there was only one senator voting for the ayes. In these circumstances, standing order 102(2) means that the Chair declares the result of the division without proceeding to a full count. Subsequently,

the Deputy President made a statement reminding senators that standing order 100(3) requires senators to vote in a division in accordance with their voice vote.

ORDERS FOR PRODUCTION OF DOCUMENTS

The Senate made a large number of orders for the production of documents during the period with the following outcomes:

- details of approval of executive international travel (17 November) – the minister responded on 24 November declining to provide the information because it would involve a substantial diversion of resources and could include information that could cause damage to Australia’s international relations; the minister also noted that information about ministerial travel was published every six months;
- changes in administrative arrangements for biosecurity operations (17 November) – the minister responded on 24 November seeking further clarification of the documents sought given the breadth of the order;
- advice on Australia’s response to the Ebola outbreak (17 November) – the minister responded on 26 November indicating that there were no relevant documents as the relevant advice was not within the minister’s portfolio responsibilities;
- a report of economic modelling for the submarine tender process (17 November) – the minister responded on 24 November indicating that the report was at working draft stage and would be provided once finalised and considered by Government, subject to any public interest immunity claim;
- the investigative report by Transfield Services on allegations regarding the treatment of asylum seekers at Manus Island regional processing centre (24 November) – the minister advised on 27 November that there was no document meeting the description in the order;
- terms of reference for a PriceWaterhouseCoopers study on data retention and any PWC report in 2014 on the costs of data retention (24 November) – the minister responded on 25 November indicating that there were no terms of reference and making a public interest immunity claim on the report on grounds of Cabinet and commercial confidentiality and that premature release could prejudice further analysis of the costs of the scheme;
- funding sought by the Queensland Government from the Commonwealth for the Moreton Bay Rail Link (25 November) and funding sought by the Queensland Government from the Commonwealth for the Ipswich Motorway (25 November) – the relevant ministers responded on 26 November indicating either that there were no relevant documents or that there was a large number of documents that could not be assessed within the timeframe but that many documents were already in the public domain or related to deliberations of the former Government and were therefore not readily available to the current Government;
- preliminary and interim reports from the National Mental Health Commission on its mental health review (25 November) – the minister declined to produce the

reports on the ground that they were deliberative in nature and publication before the review process was finalised would inhibit the ability of the Government to respond properly to the review (a notice of motion rejecting these grounds was not dealt with before the Senate rose);

- requests to the Queensland Government for further information on the proposal for onshore disposal of dredge spoil at Abbot Point (25 November) – documents tabled on 27 November;
- statements clarifying Government commitments on homelessness and affordable housing (27 November) – the minister responded on 3 December disputing assertions in the order and indicating that a Housing and Homelessness Issues Paper would be released as part of a forthcoming White Paper process;
- a report on income management in the Northern Territory (1 December) – the minister responded on 3 December indicating that the report had not yet been received by the minister, but there was every intention of releasing it publicly;
- correspondence detailing the Government’s commitment to the Ipswich Motorway (1 December) – the minister responded on 3 December indicating that the documents sought belonged to a former Government and claimed public interest immunity on the ground that publication would be a harmful interference in the confidentiality of government records if documents were releasable by a later administration without appropriate, independent clearance processes;
- the independent report of the Air Warfare Destroyer Program together with reasons for any commercial in confidence redactions (2 December) – response not provided by the due date;
- the final report of the Productivity Commission on child care and early childhood learning (3 December) – due 4 December but other business superseded any opportunity to table a response;
- reports on the Nationally Consistent Collection of Data on students with a disability (3 December) – due in February 2015;
- summarised findings of the PWC report on data retention or a copy of the report with commercially sensitive information redacted and a timeline for developing cost estimates for the policy (3 December) – due 4 December but other business superseded any opportunity to table a response.

An order for the NBN Corporate Plan, agreed to in the previous period (see [Bulletin No. 287](#)) was responded to on 17 November with advice that the plan had been published on the organisation’s website on that day.

ACCOUNTABILITY

Resolutions agreed to on 17 and 24 November called, respectively, for the appointment of a new Australian Electoral Commissioner and other AEC officers, and a new Independent National Security Legislation Monitor, all offices which have been vacant for some time.

COMMITTEES

Legislation committees in Group A continued their supplementary budget estimates hearings on 20 November and additional hearings were also held on several other occasions during the period.

The Select Committee on Certain Aspects of Queensland Government Administration Related to Commonwealth Government Affairs has experienced some procedural difficulties since its establishment on 30 September (see [Bulletin No. 286](#)). Committees need authorisation to meet during the sittings of the Senate in circumstances other than those prescribed in the standing orders. In the past, such authorisation was sought by notice of motion or moved by leave. A new procedure adopted on 24 September (see [Bulletin No. 286](#)) streamlines the process but provides for the question to be put on any of the announced proposals at the request of any senator. Otherwise, the proposals are deemed to have been approved. The question on proposals for the select committee to meet during the sitting of the Senate were required to be put to the vote on two occasions (on 19 and 24 November) and the Chair was denied leave on 25 November to move a motion to obtain authority for the committee to meet.

Another new select committee, on wind turbines, was established on 24 November. The committee has a membership of seven, with four of those members to be chosen from cross-bench senators including the Australian Greens (one member).

As the year wrapped up, committees presented many reports to the Senate. These included many reports on legislation and the usual weekly reports by the legislative scrutiny committees. Other reports were presented by the Select Committee on Health (First interim report), on the future of Australia's naval shipbuilding industry (part II) and on income inequality. Other reports due to be presented on 4 December were not reached owing to intervening business.

The Privileges Committee presented a right of reply [report](#) on 2 December. The committee's 160th [Report](#), on the use of CCTV material in Parliament House, was presented just before the Senate rose for the year, in the early hours of 5 December. Although not making a finding of contempt, the committee found that the particular use of CCTV footage to investigate a staff member was not authorised by the code of practice governing CCTV use, that the code needed redeveloping to take into account the primacy of the powers, privileges and immunities of the Houses and that senior officers in the Department of Parliamentary Services undergo structured training to acquaint themselves with the principles of parliamentary privilege. The committee drew to the attention of the Finance and Public Administration Legislation Committee inconsistencies in the evidence given to both committees by the Secretary of DPS.

Details of new committee inquiries may be found in the [Senate Daily Summary](#).

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/Powers_practice_n_procedures](http://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures).

Inquiries: Clerk's Office
(02) 6277 3364