



DEPARTMENT OF THE SENATE

PROCEDURAL INFORMATION BULLETIN

No. 305

9 May 2016

*For the sitting period 2 to 4 May and
Budget estimates hearings on 5 and 6 May 2016*

SIMULTANEOUS DISSOLUTION

First, the prorogation for a new session of Parliament opened on 18 April 2016; now the simultaneous dissolution of both Houses under section 57 of the Constitution, which took effect at 9 am on 9 May, the anniversary of the opening of the first Federal Parliament in 1901 (as well as of the provisional and new parliamentary buildings in 1927 and 1988). Both procedures have now been invoked for the first time in some decades, signalling that the end of the 44th Parliament has been an unusual one.

A special issue of the [Bulletin](#) on 23 March set out the impact of the prorogation on Senate business. This issue begins with a summary of the impact of a dissolution of the Senate.

The dissolution brings to an end all proceedings of the Senate and its committees, as well as all joint committees on which senators serve. It overtakes the meetings of the Senate scheduled for the week beginning 9 May, along with the program of future meetings.

The offices of President and Deputy President are vacated (except for the purpose of exercising any powers or functions under a law of the Commonwealth, as authorised by sections 6 and 7 of the *Parliamentary Presiding Officers Act 1965*). This means that there can be no out-of-sitting tabling of committee reports under standing order 38, or documents under standing order 166, until the new Senate meets and new presiding officers are chosen.

Other business is affected as follows.

- All temporary orders cease to operate.
- All business on the Notice Paper lapses but may be restored or reintroduced in the new Parliament in the usual way.
- All unanswered questions on notice lapse but may be resubmitted in the new Parliament. Senators cannot place new questions on notice between the dissolution and the date of the election, but re-elected senators may place questions on notice thereafter. These questions will appear in the first Notice Paper in the new Parliament (published for the second day of meeting) and the clock on the 30 day rule runs from that date. (See below for estimates questions on notice.)
- Although the requirement to answer questions on notice lapses with the questions, replies may continue to be received (because they are received under the standing orders by the Clerk, rather than the Senate), but not published (because publication of an answer is effected by supplying a copy to the senator who sought it). Any answers so received by the Clerk will be provided to senators on their re-election and then published online.

- Senate committees cease to exist and may therefore not meet after the dissolution until re-appointed in the new Parliament. Their inquiries also cease unless, and until, resurrected in the new Parliament, including by their successor committees recommending this action and the Senate adopting the recommendation. Their records pass into the custody of the Senate.
- Unanswered estimates questions on notice also lapse but may be the subject of future orders by the Senate (for example, orders for the production of answers to questions taken on notice at previous estimates hearings by particular legislation committees). Although the requirement to provide answers to questions taken on notice at committee hearings lapses, any answers so provided will be held by the secretariat to be dealt with by successor committees (if any).
- The Registrar of Senators' Interests cannot receive or publish statements and alterations of interest after the dissolution of the Senate. Each senator must submit a statement within 28 days of the first sitting of the new Senate, and re-elected senators must notify benefits received since their last alteration.
- The time for giving notices of motion to disallow legislative instruments continues to run from one Parliament into the next. So, for example, for an instrument tabled on the last day of sitting before the dissolution there will still be 15 sitting days in the next Parliament to give notice of a motion to disallow it. Instruments which are the subject of unresolved disallowance motions at the dissolution are deemed to be tabled on the first sitting day of the new Parliament, so that the time for giving notice of motion to disallow them begins afresh.

LEGISLATION

During the last brief sitting period for the 44th Parliament, the most significant bills passed from the point of view of subsequent developments were the Supply Bills.

The package of three bills followed the usual structure for appropriation bills: (No. 1) for the ordinary annual services of the government, (No. 2) for “certain expenditure” and the third for the parliamentary departments. The distinction between the (No. 1) bill and the (No. 2) bill reflects the constitutional differences between the powers of the Houses defined in section 53. The bills provided for expenditure for approximately the first five months of the new financial year (less the impact of any approved new policy expenditure) as an interim measure to enable the public (and parliamentary) service to continue during the election period. After the election, the appropriation bills introduced on 3 May (now lapsed), will be reintroduced.

Supply bills were once a common element of the budget cycle when budgets were handed down in August and it was therefore necessary to provide for interim supply from the beginning of a new financial year on 1 July until the passage of the main appropriation bills. They became unnecessary from the early 1990s when the budget moved from August to May and the appropriation bills could therefore be passed before the beginning of the

new financial year. The exception was in 1996 when a new Government, elected in March that year after over a decade in Opposition, chose to bring down its first budget in August, temporarily reviving the need for supply bills for that year.

The bills passed the Senate on 3 May.

Government amendments to the Northern Australia Infrastructure Facility Bill 2016 were circulated with the statements required by the order of the Senate of 26 June 2000 in relation to requests for amendments. A statement by the Chair of Committees that, in accordance with the precedents of the Senate, they were properly framed as amendments rather than requests meant that they could be agreed to as amendments and the bill was read a third time on 2 May before being returned to the House of Representatives. The amendments changed the definition of “Northern Australia”, meaning that the fixed amount in the special account could be spent over a wider geographic area. Because there was no increase in the charge or burden on the people within the meaning of section 53 of the Constitution, there was no basis on which the Senate could treat them as requests for amendments. The Chair quoted Quick and Garran who stated that:

...the Senate is only forbidden to amend [bills imposing taxation] and the annual appropriation bill; it may amend two kinds of expenditure bills, viz.: those for permanent and extraordinary appropriations. ... The Senate may amend such money bills so as to reduce the total amount of expenditure or to change the method, object and destination of the expenditure, but not to increase the total expenditure originated in the House of Representatives. (p. 671).

The House appears to take the view that such a change required a message from the Governor-General under section 56 of the Constitution. On the House’s view, this meant that, the amendments should have been framed as requests, but no reasons were articulated for taking an overly-reductive view of the Senate’s powers under section 53. The House therefore disagreed with the Government’s amendments and made identical amendments in their place. When the message was returned to the Senate, the Chair of Committees made another statement indicating that as the amendments made by the House were identical to the ones they had disagreed with, the Senate could now agree to the amendments which it had originally made. A similar approach was taken to a similar dispute in August 2015 in relation to the Medical Research Future Fund Bill 2015 (see [Bulletin No. 295](#)).

Several lapsed bills from the previous session were restored to the Notice Paper, either by motion on notice (for Senate bills) or pursuant to a message from the House of Representatives, using the procedures under standing order 136 (see Bulletin Nos. [303](#) and [304](#)). Several were subsequently agreed to without amendment. Senate amendments to the Social Services Legislation Amendment (Miscellaneous Measures) Bill 2015 and the Tax and Superannuation Laws Amendment (2016 Measures No. 1) Bill 2016 were also agreed by the House.

DISALLOWANCE

Debate occurred on a motion moved by Senator Siewert to disallow the Social Security (Administration) (Trial Area – East Kimberley) Determination, in relation to the so-called welfare card trial, but had not concluded by the time the Senate was dissolved. This instrument and the Migration Amendment (Offshore Resources Activity) Regulation 2015 (on which action was also outstanding) will be deemed to have been tabled again on the first sitting day of the 45th Parliament, providing senators with the opportunity to give fresh disallowance notices if they so choose.

CASUAL VACANCY

Senator Dodson was sworn in on 2 May, having been chosen by the Parliament of Western Australia, at a specially convened sitting, to fill the vacancy caused by the resignation of Senator Bullock on 13 April.

ORDERS FOR THE PRODUCTION OF DOCUMENTS

There was a great deal of activity in the final days of the 44th Parliament with new orders necessarily including very tight deadlines.

Further documents sought in relation to the funding of the Perth Freight Link were refused, with the Finance Minister's response (presented 20 April) making public interest immunity claims on the basis of Cabinet deliberations, commercial sensitivity and potential harm to the commercial interests of the Commonwealth and/or the States. The long-running issue was the subject of a report of the Rural and Regional Affairs and Transport References Committee, tabled on 3 May.

The order of 19 April for various documents relating to contracts between Broadspectrum (formerly Transfield) and its subcontractor Wilson Security was denied by the Attorney-General on 2 May, on the basis that compliance would involve an unreasonable diversion of government resources, not a recognised ground of public interest immunity. (See below for a report of the Privileges Committee involving these companies.)

The Minister for Defence, on 21 April, reiterated her opposition to tabling certain modelling in relation to the submarine tender process (re-ordered on 19 April), citing Cabinet deliberations in support of her decision.

New orders were agreed to as follows:

- For correspondence between the former Secretary of the Department of Agriculture and the portfolio minister (agreed 2 May) – the response (tabled 3 May) referred to issues of privacy and ongoing freedom of information proceedings before the Administrative Appeals Tribunal, but included an undertaking to revisit the issue in light of the outcome of the AAT proceedings.
- For the Government's response to the Select Committee on Wind Turbines (agreed 2 May) – no response, other than a statement by the duty minister when

the motion was moved, indicating that the response was being developed.

- For documents relating to the ASADA investigation of the Essendon football club (agreed 2 May) – the response (presented on 6 May after the matter had been raised at estimates) involved release of a redacted document commissioned by the previous government but other documents were not produced, the minister citing sensitive personal information, details of ongoing investigations and matters subject to judicial proceedings as grounds. She also made the curious statement that, “Uncertainty exists regarding the lawfulness of the production of documents sought,” and foreshadowed potential public interest immunity claims.
- For reports from Social Ventures Australia relating to Indigenous advancement programs (agreed 3 May) – not responded to.
- For evidence of claims by a former Member for Indi relating to funding of regional hospitals in Victoria (agreed 3 May) – a response tabled on 4 May indicated that no documents had been identified which would meet the terms of the order.
- For the instrument that would give effect to the Government’s proposed changes to Medicare bulk-billing incentives for diagnostic imaging and pathology services (agreed 3 May) – the response tabled on 4 May indicated that the instrument (for measures due to commence on 1 July 2016) would be made and tabled in accordance with the *Legislation Act 2003* and the Senate would have the opportunity to scrutinise it then.
- For all answers to unanswered questions placed on notice at the additional estimates hearings (agreed 3 May) – the response by the Attorney-General tabled on 4 May indicated that any attempt to comply with the order would involve an unreasonable diversion of government resources, not a recognised ground of public interest immunity. Answers were followed up with individual agencies during Budget estimates hearings (see below).

MATTERS OF PRIVILEGE

The Finance and Public Administration References Committee presented an interim report out of sitting in relation to its inquiry into electoral funding and disclosure regimes, with particular references to associated entities of political parties. The purpose of the report was to inform the Senate of the failure of the Cabinet Secretary, Senator Sinodinos, to appear at the committee’s hearing as directed by the Senate (see [Bulletin No. 304](#)).

Subsequently, Senator McAllister raised a matter of privilege with the President under standing order 81 and the President granted precedence to a motion to refer it to the Privileges Committee on 3 May. In his statement, the President indicated that while the criteria he was required to apply appeared to be satisfied by the circumstances of the matter, it was for the Senate to judge whether the contempt jurisdiction should be

invoked in this case rather than one or more of the political or procedural penalties for such non-compliance, including as listed in the interim report of the committee.

The Senate agreed to the reference on 4 May but, with the dissolution of the Senate, the matter lapses unless revived in the 45th Parliament.

The Privileges Committee also presented its report on possible false or misleading evidence given to the former Nauru select committee (4 May, [162nd report](#)). While the committee recommended that no contempt should be found, it expressed concerns about the need for witnesses to inform themselves about their obligations to committees and to correct evidence in a timely manner. It also made observations about the propriety of observing senators going about their business and the potential for contempt in these circumstances. The Senate has adopted the committee's findings and recommendations.

COMMITTEE MATTERS

Senators continued to attempt to refer matters to committees until the Senate's expected last day of sitting on 4 May (see above). Other proposed inquiries (including by the Foreign Affairs, Defence and Trade Legislation Committee on the rate of suicide amongst veterans) were withdrawn or negated.

Committees presented an extraordinary number of reports in the last weeks of the Parliament, including interim reports on many major inquiries. A full list is available from the Senate Daily Summary. Notwithstanding the level of reporting, committees concluded the 44th Parliament with 55 references outstanding, an indication of the heavy reliance placed on committees during the Parliament.

PRESENTATION OF THE BUDGET

The Budget was presented a week earlier than expected, on 3 May. In the House, the appropriation bills were introduced and the budget papers tabled. In the Senate, as well as the budget papers, the Finance Minister tabled the Particulars of Proposed Expenditure and moved that they be referred to legislation committees for inquiry and report. While the reporting dates have been overtaken by the dissolution, legislation committees held two days of hearings on 5 and 6 May in accordance with an order agreed to on 19 April (see [Bulletin No. 304](#)).

ESTIMATES HEARINGS

In a truncated program, four legislation committees met on each day in their usual groupings to consider only a selection of matters in the time available. Only minor procedural issues arose.

For the most part, committees focused on those matters that had been the subject of budget announcements or related controversies, including the cost of various budget expenditure and revenue measures. Departments' understanding of the caretaker conventions was probed, as were unanswered questions on notice from the previous round

which had been the subject of a global order for their production on 3 May.

Other topics covered included:

- youth internships for unemployed young people;
- estimates of the cost of the proposed company tax cuts over ten years;
- superannuation changes, and their effect on women in particular;
- various corporate regulatory matters including the Nurofen case;
- CSIRO's oceans and atmosphere research;
- proposed changes to the Medicare payments system, and to pathology and imaging payments;
- the ASADA action against Essendon football club;
- NDIS matters;
- future submarine and naval shipbuilding programs;
- free trade agreements;
- the Indigenous Land Corporation's loans in relation to the Uluru purchase;
- the AEC's paper sources for ballot papers in the forthcoming election;
- new appointments to the Australian Human Right Commission;
- arrangements for and costs of a plebiscite on marriage equality;
- arrangements following the ruling of the Papua New Guinea High Court on the Manus Island detention centre;
- proposed tax changes for backpackers;
- the carp herpes virus;
- urban transport infrastructure review processes;
- arts funding;
- new management at the ABC;
- coral bleaching in the Great Barrier Reef; and
- various renewable energy projects.

The Procedural Information Bulletin will return in the 45th Parliament.

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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