



DEPARTMENT OF THE SENATE

PROCEDURAL INFORMATION BULLETIN

No. 306

2 September 2016

For the sitting period 30 August to 1 September 2016

OPENING OF THE 45TH PARLIAMENT

There were some unusual features of the opening of the 45th Parliament as far as the Senate was concerned because the opening followed a general election for all senators, the first since July 1987 when the previous simultaneous dissolutions occurred.

The Chief Justice of the High Court of Australia attended as the Deputy of the Governor-General to open the Parliament and then to swear in senators. As the office of President was vacated at the dissolution (apart from the residual authority exercised by the President under the *Parliamentary Presiding Officers' Act 1965*), the first task of senators was to elect a new President. For the first time in some years, no ballot was required and Senator Parry was re-elected as President unopposed. The President was presented to the Governor-General, which is required by standing order 8 before the Senate proceeds to any business. The Governor-General then presented the opening speech on behalf of the Government to the members of both Houses assembled in the Senate chamber.

Later on 30 August, Senator Lines was elected unopposed as Deputy President.

ROTATION OF SENATORS

After a dissolution of the Senate, section 13 of the Constitution requires that the rotation of senators be re-established. The method of doing so is up to the Senate. After the first election in 1901 and simultaneous dissolutions in 1914, 1951, 1974, 1975 and 1983, the Senate was divided according to the order of senators listed on the certificates of election. Those listed in the bottom half of the list were designated as senators in the first class whose terms concluded after only three years. Senators in the top half of the list, or second class, served six year terms.

After the 1983 election, the Hawke Government introduced amendments to the Commonwealth Electoral Act to provide for the electoral commission to conduct a recount after any simultaneous dissolution, but using the quota for a half-Senate election. This method was considered to better reflect the system of proportional representation that had been in operation since the 1949 election and, therefore, provide a fairer estimation of which senators had received greater electoral support. Despite the availability of this method, it was not used after the 1987 dissolution and it was not used in 2016 either, despite resolutions initiated by both major parties in previous years that the recount method should be followed in the event of a simultaneous dissolution in the future. In 1987, six year terms went to two senators from a minor party that tended to support the government on major issues, rather than to two Opposition senators who would have secured six-year terms under the recount method. In 2016, the two major parties each gained an additional long-term senator at the expense of

minor parties by using the order of election method. The decision was the subject of the first division of the session.

PARLIAMENTARY PRIVILEGE

Issues of parliamentary privilege were prominent in the first week of sitting after the Australian Federal Police executed search warrants on the office of a senator and the home of an Opposition staff member during the election campaign period in connection with an inquiry into leaked documents from NBN Co Limited. A second search warrant was executed on the Department of Parliamentary Services a few days before the opening of Parliament when the AFP searched computer servers in connection with the same inquiry. In accordance with the relevant protocols applying to AFP searches in such matters, the senator concerned, Senator Conroy, made a claim of parliamentary privilege over the seized material and, during the period when there was no President in office, asked the Clerk to place the matter before the Senate for determination when it reconvened.

On 30 August, the President made a statement about the matter, tabled a background paper by the Clerk and offered to facilitate consultations on a way forward. In the meantime, the Leader of the Opposition in the Senate gave notice of a motion to refer the matter to the Privileges Committee. The motion proposed that the committee oversee the determination of the claim, including by seeking further agreement from the Senate on the appointment of a third party arbiter to examine the documents in light of submissions made to the committee, should the committee be unable to make a determination on the principles and a description of the material seized. The method proposed was an amalgam of methods used in two previous cases but adapted to the present circumstances. In a statement by leave on the matter, the Leader of the Government in the Senate disclosed that the Opposition had sought the Clerk's advice on the motion before criticising the advice as "poor" but then not opposing the motion.

Senator Conroy also raised as matters of privilege under standing order 81 possible improper interference, or attempted possible improper interference, with the free performance of his duties as a senator from aspects of the inquiry and search warrant execution, as well as the question of adverse action taken against persons in connection with the provision of information to Senator Conroy. In a statement to the Senate on 31 August, the President granted precedence to a notice of motion and the reference to the Privileges Committee was agreed to on 1 September.

COMMITTEE INQUIRIES

When the President returned thanks to the Senate on his re-election, he counselled senators against exceeding their capacities to support a large number of committee inquiries by overloading the committee system. Notwithstanding his words, the Senate had agreed to several new inquiries even before members had been appointed to committees, including into the recent census and the welfare of Australian veterans,

in addition to several bills referred via the Selection of Bills mechanism and associated amendments to the motion for the adoption of the report.

Dates were agreed to for the supplementary Budget estimates hearings in October and the order allocating departments and agencies to committees was amended to take account of adjustments in the administrative arrangements of the government. An Opposition motion set a new date for the lodging of answers to questions taken on notice from the 2015-16 additional estimates hearings and 2016-17 budget estimates hearings that were still unanswered. The motion also provided for senators to use the follow-up mechanism in standing order 74(5) in respect of unanswered questions from the previous Parliament.

The Government's response to the report of the Legal and Constitutional Affairs References Committee on the handling of the Man Haron Moris letter to the Attorney-General acknowledged the continuing need for senior executive staff across the Australian Public Service to undergo training in parliamentary accountability, including that provided by the Senate Department.

MINISTERIAL STATEMENTS

A temporary order from the previous Parliament that provided a right for senators to take note of ministerial statements was revived to operate till the end of June 2017. Its first use was on 1 September in relation to a ministerial statement on national security.

ROYAL COMMISSIONS

A motion calling for the establishment of a Royal Commission into immigration detention facilities was defeated on 31 August, but another motion calling for a Royal Commission into banking and financial services was agreed to on 1 September, having been postponed from the previous day after some procedural difficulties. The resolution was transmitted for concurrence to the House of Representatives where some difficulties were experienced by the Government on quashing debate on it.

ORDERS FOR THE PRODUCTION OF DOCUMENTS

The following orders for the production of documents were agreed to on 1 September:

- on the Perth Freight link (due 12 September);
- for the Government's response to the report of the Select Committee on Wind Turbines (due 21 November) (the same order having been passed on 2 May – see [Bulletin No. 305](#)).

A response was tabled on 1 September to the order of 19 April 2016 for certain economic modelling in relation to the submarine tender process (itself a restoration of an earlier order). The initial response on 21 April (seen [Bulletin No. 305](#)) cited Cabinet deliberations to justify non-compliance, but the minister provided the documents to the Senate following the Government's completion of the deliberations in the matter,

one of them with minor redactions to remove commercially sensitive information that, if released, could be expected to cause damage to Australia's international relations. This provides a good example of a minister following up her accountability obligations and complying with an order once the time-sensitivity of the material had evaporated.

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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