



# DEPARTMENT OF THE SENATE

## PROCEDURAL INFORMATION BULLETIN

No. 310

2 December 2016

*For the sitting period 21 November to 2 December 2016*

### LEGISLATION

The major focus during the sitting period was on legislation. The Fair Work (Registered Organisations) Amendment Bill 2014 (one of the simultaneous dissolution triggers) passed with amendments in the early hours of 22 November after a majority of the Senate agreed to sit for extended hours to deal with the bill. Earlier in the day, the Opposition had given contingent notices of motion for the suspension of standing orders to allow amendments to be moved that were not relevant to the bill but which were regarded as a *quid pro quo* for its support by the Opposition. Because such notices cannot have effect on the day they are given, they were not used. The bill passed with the support of cross bench senators after the Government accepted amendments in relation to auditing and whistle-blower protections, moved jointly by Senators Xenophon and Hinch. The Opposition's amendments in relation to disclosure of political donations were not moved, while others were defeated, along with a Greens amendment.

The second simultaneous dissolution trigger, the Building and Construction Industry (Improving Productivity) Bill 2013 and a related bill, passed with numerous amendments on 30 November after the Senate had agreed to sit extended hours on the previous two days. Most of the amendments, moved by the Opposition and different combinations of cross bench senators, were agreed by the Government as the price of support for the bill. All amendments made by the Senate were agreed to by the House of Representatives. As part of the negotiations, sweeping changes were made to the Commonwealth Procurement Rules, the new version of which was tabled during the debate before being formally tabled by the Clerk as a disallowable instrument on 30 November.

Changes to superannuation laws reducing tax advantages for high income earners were agreed to, along with changes to regulation of the VET sector, after some negotiations between the Houses. The so-called backpacker tax changes and associated increases to the passenger movement charge faltered initially when the passenger movement charge bill was negated at second reading on 23 November because of the absence of two PHON senators from the vote. After the senators provided an explanation the following day for missing the division, the vote was taken again by leave and the bill was agreed to. A further bill, apparently implementing an agreement with PHON senators was agreed to on 30 November. Requests for amendments to the main backpacker tax bill, initiated by Senator Lambie, were not made by the House of Representatives. A new bill with a lower tax rate than originally proposed, apparently representing a new compromise, was introduced in the House and sent to the Senate on 30 November. The Senate again agreed to Opposition requests setting the rate at the level originally proposed by Senator Lambie and the House again did not make them. The Senate did not press those requests, allowing the bill to finally pass. The Senate also agreed to further changes to the superannuation elements of the package, on the basis of which the Government had secured support from the Australian Greens for the new compromise tax figure of 15%. The superannuation changes were contained in a new bill introduced in the House

of Representatives late on the last sitting day and subsequently agreed by the Senate before it rose for the summer adjournment.

## DISALLOWANCE

Under arrangements foreshadowed in the previous sitting week (see [Bulletin No. 309](#)) and agreed to on 21 November, Senator Leyonhjelm's motion to disallow the Customs (Prohibited Imports) Amendment (Shotguns and Shotgun Magazines) Regulation was brought on for debate on the last day for disallowance and negatived by an overwhelming majority of senators. The vote was notable for the absence of Nationals and Country Liberal Cabinet ministers and for the fact that two Nationals senators crossed the floor to vote in favour of the motion. Disallowance of the regulation would have had the effect of lifting the import ban on certain Adler lever action shotguns.

Debate resumed on the motion for disallowance of the Legal Services Amendment (Solicitor-General Opinions) Direction 2016 which was disallowed on 23 November. The Attorney-General had already repealed the instrument but, by disallowing it as well, the Senate preserved its rights in relation to any remaking of an instrument the same in substance within the next 6 months. Further information emerged in the press about the possible context for the direction, leading to further scrutiny of the Attorney-General in the last sitting week of the year, including a motion requiring the Attorney to make a comprehensive statement to the Senate about the matter, and providing for any senator to move a motion to take note of the statement (28 November). The issue was the subject of numerous questions without notice.

## PRIVILEGES COMMITTEE REFERENCE AND REPORT

The implications of intrusive law enforcement powers on the privileges and immunities of parliamentarians, together with the need for specific protocols, was the subject of a reference to the Privileges Committee, agreed to on 28 November. The terms of reference were amended on the motion of the Chair of the Privileges Committee, Senator Collins, to include such other matters as the adequacy of the existing protocols for the execution of search warrants where parliamentary privilege may be an issue.

The committee presented an interim report on 1 December on its consideration of the disposition of the documents seized from Senator Conroy's office (see [Bulletin No. 306](#)). The Senate adopted the committee's recommendations that it be empowered to examine the material in the Clerk's custody and that it also be authorised to appoint persons with specialised knowledge for the purposes of the inquiry with the approval of the President. In its report, the committee noted that the House of Representatives had agreed to a recommendation of its Privileges and Members' Interests Committee that it uphold the claim of privilege made by a member in relation to documents seized on 24 August 2016 (which were identical to documents seized on that date in relation to former Senator Conroy but which represent only part of the claim made by former Senator Conroy).

## OTHER COMMITTEE MATTERS

As is usual at this time of year, committees presented numerous substantial reports on significant inquiries as well as their regular reports on legislation and legislative scrutiny. Reports were presented on the 2016 Census (Economics References Committee), the role and contribution of regional capitals (RRAT References Committee), Commonwealth funding of Indigenous Tasmanians (Finance and Public Administration References Committee), the indefinite detention of people with cognitive and psychiatric impairment (Community Affairs References Committee), the Government's bargaining policy for the Australian Public Service (Education and Employment References Committee), growing evidence of a tick-borne disease causing Lyme-like illness (Community Affairs References Committee) and the medical complaints process (Community Affairs References Committee).

Three new select committees were established: on strengthening multiculturalism to report by 14 August 2017 (but not to commence till 27 March 2017); on funding for research into cancers with low survival rates to report by 28 November 2017; and on the exposure draft of the Marriage Amendment (Same-Sex Marriage) Bill to report by 13 February 2017. Unusually for these times, the last-mentioned select committee has a membership of eight senators with four appointed by the Leader of the Government in the Senate and a government chair.

The Senate also agreed on 1 December to the establishment of a joint select committee on government procurement, on the motion of Senator Xenophon. The House of Representatives agreed with the resolution just before it rose for the summer adjournment.

Several new references were also agreed to, details of which are in the [Senate Daily Summary](#).

The streamlined procedures for inquiry extensions do not apply to select committees, so the Chair of the Select Committee on the Resilience of Electricity Infrastructure in a Warming World sought an extension for the committee by motion on notice, agreed to on 29 November.

## NEW TEMPORARY AND CONTINUING ORDERS

On the motion of Senator Waters, a new order of continuing effect for the production of details of meetings with former ministers was agreed to on 23 November. Apparently sparked by concerns about former ministers being potentially involved in government relations roles, the order requires Senate ministers to table information before each round of estimates about meetings between former ministers and current ministers, agency heads or deputy heads. The first set of reports will be due not later than 7 days before the beginning of additional estimates hearings in February.

In an attempt to encourage timely responses from ministers to its concerns, the Scrutiny of Bills Committee put forward a temporary order to operate for the next 12 months to provide senators with the option of asking ministers for explanations for failure to respond to the committee, together with the right to move motions without notice relating either to the explanation or failure to provide one, or to the consideration of the bill in question. The

order was agreed to on 29 November and will operate in a similar manner to the follow-up mechanisms for unanswered questions on notice (in standing order 74(5)) or overdue returns to order (in standing order 164(3)), but with more teeth because of the capacity it provides to senators to influence the consideration of a bill. The rationale for the order is contained in its first paragraph which declares that when the committee writes to a minister, it expects a response in time for the committee to consider it and report to the Senate while the bill is still before the Parliament.

## ORDERS FOR THE PRODUCTION OF DOCUMENTS

In recent times, several orders have sought overdue government responses to particular committee reports. One such order, agreed to on 28 November, sought the response to the report of the Community Affairs References Committee on income inequality, tabled in December 2014. A letter from the Finance Minister, tabled on 29 November, indicated that although the response had not been finalised, the Government was committed to doing so before the end of the year. The minister then listed various measures implemented by the Government to address income inequality.

An order agreed to on 21 November, in connection with an inquiry by the Foreign Affairs, Defence and Trade References Committee into ADF training programs on resistance to interrogation, met with a response from the Defence Minister seeking the Senate's agreement to provision to the committee of partial access to some of the material, with commentary, as an adjunct to Defence's submission to the inquiry. The minister also requested that the committee view the material in secure conditions, ending with a commitment to provide as full an exposure to the material as possible and manageable.

In contrast, an order to the Attorney-General of 9 November for the legal advice provided to the Government by David Jackson QC on the question of former Senator Day's eligibility for election was responded to with an explanation of why the advice would not be provided (see [Bulletin No. 309](#)).

Other orders were agreed to as follows:

- for the Independent Review of the National Red Imported Fire Ant Eradication Program (agreed 29 November, due 1 December; provided 1 December)
- for a cost-benefit analysis on ratifying the Minamata Convention on Mercury commissioned by the Department of the Environment and Energy (agreed 29 November, due 1 December; response provided on 1 December indicated that the assessment would be provided as part of a Regulation Impact Statement currently being prepared)
- for various information connected with the proposed re-location of the Australian Pesticides and Veterinary Medicines Authority (agreed 29 November, due 1 December; response provided on 1 December indicated that the documentation would be produced in the "near future")
- for information about communications between Commonwealth and Western Australian ministers and officers about the Bell Group litigation (agreed 30 November,

due 14 December).

A response to an order agreed on 7 November for modelling referred to in the United Nations Framework on the Convention on Climate Change session SB145(2016) was provided on the due date of 1 December and indicated that the projections were still under preparation and would be provided before the end of 2016. Another order agreed to on 9 November for information used to compile a progress report on the cashless credit card trial was responded to on 1 December with a copy of the report itself and a description of its preparation. Finally, an order agreed to on 9 November for the Design and Mobilisation contract between the Commonwealth and submarine contractor, DCNS, was responded to with a redacted version of the contract. The redactions were made on the basis of commercial considerations and security interest and were explained in the covering letter. (See [Bulletin No. 309](#) for all three orders.)

## RELATED RESOURCES

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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](#).

Inquiries: Clerk's Office  
(02) 6277 3364