



# DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

No. 257

11 November 2011

For the sitting period 31 October — 10 November 2011

## CASUAL VACANCY FILLED

The sitting period began with the swearing of Senator Sinodinos who was chosen by the Parliament of NSW to fill the vacancy caused by the resignation of Senator Coonan. Senator Sinodinos had the opportunity to make a short contribution to a matter of public importance discussion on 3 November and, in doing so, indicated that he was not making his first speech. In accordance with what is now standard practice, he will make his “official” first speech in the next sitting period pursuant to a special order permitting him to speak without any question before the chair.

## CLEAN ENERGY LEGISLATION

The period was dominated by consideration of the clean energy package of bills whose main purpose is to impose a carbon tax. The Select Committee on the Scrutiny of New Taxes presented its final report on the carbon tax on 1 November and the second reading debate on the bills proceeded over several days. An attempt by the Opposition to suspend standing orders to defer consideration of the bills till after the next election was unsuccessful on 31 October.

While two weeks had initially been scheduled for the legislation, the Government moved a variation to the scheduling resolution on 3 November, curtailing the debate further and also providing for other legislation to be considered subject to limitations of debate. While procedures are available under standing order [142](#) to declare a bill urgent and to allot time for its consideration, it is some time since the traditional “guillotine” has been employed. An alternative method has been used to subject legislation to time limits by resolution, providing for standing order [142](#) to apply to the legislation as if it were subject to a limitation of debate. The advantage of this approach is that it reduces the number of steps required to put a time management mechanism into place. It can also be moved by senators who are not ministers (and has been in the past – see [Bulletin No. 198](#), for example, in relation to the bill to lift import restrictions on the drug RU486). The disadvantage is that it reduces opportunities for the minority to dispute the procedure and to put the case for the usual methods to be adhered to.

The bills were passed without amendments or requests on 8 November after all amendments moved by the Opposition and Senator Xenophon had been negatived. The Opposition also sought unsuccessfully to suspend standing orders at the end of the allotted time in order to extend the time for debate.

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## OTHER LEGISLATION

The Steel Transformation Plan Bill 2011 was introduced on 31 October and, as with the carbon tax bills, the compound motion to apply the expedited proceedings under standing order 113 was divided at the request of an Opposition senator to enable debate to occur on the question whether the proceedings should apply (see [Bulletin No. 256](#)). The motion was agreed to, as was the bill, on 9 November, under a limitation of debate.

The Australian Renewable Energy Agency bills and the bills to require plain packaging of tobacco products were also passed after limitations of debate took effect. The former were agreed to without divisions while the questions for the second and third readings of the latter were divided at the request of the Opposition which was opposed to one of the bills. The bills passed with Government amendments to the principal bill to change the implementation date for the scheme.

A private senator's bill proposing changes to quarantine arrangements was debated during the time for such business on 10 November but debate was adjourned before the second reading question was put, owing to the absence due to illness of the bill's sponsor.

The Government gave notice of a motion on 10 November to treat the Auditor-General Amendment Bill 2011 (see [Bulletin No. 256](#)) as Government Business for its remaining stages. Proceedings on the bill in the Senate are all but concluded and designating it as Government Business may improve its chances of being considered before the end of the year. A further private member's bill was reported from the House of Representatives on 10 November (Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011) and introduced as Government Business, indicating that the Government now intends to sponsor it through the Senate.

## DISAGREEMENT OVER THE ALLOCATION OF COMMITTEE CHAIRS

When the standing orders providing for legislation and references committees were revived in 2009, a previous formula to divide the references committee chairs between the Opposition and the largest minority group in the ratio of 6:2 was not revived. By that stage, minority groups and independent senators had fluctuated in both number and size and the allocation was left for determination by agreement and, in the absence of agreement duly notified to the President, by the Senate. At the restoration of the system, the Australian Greens had one chair and the Opposition 7. When the Greens increased their numbers from 1 July 2011, equalling the number of Australian Democrat senators at the zenith of that party's representation, there was pressure for the allocation to return to the old ratio.

The absence of agreement was notified to the President who tabled the correspondence on 31 October and a minister gave notice of a motion to provide for the chair of the Legal and Constitutional Affairs References Committee to be elected by committee members from members nominated by minority groups or independent senators. The Senate declined to consider the motion as a formal motion on 1 November, but it was agreed to on 2 November after somewhat acrimonious debate and unsuccessful attempts to amend the motion to substitute, and then add, the chair of another committee, the Environment

and Communications References Committee. The resolution will remain in effect until the President is notified of an agreement that meets the terms of standing order [25\(9\)\(c\)](#).

## ORDERS FOR PRODUCTION OF DOCUMENTS

After a lull in usage, orders for production of documents were again deployed as a means to obtain information from the Government. An order of 19 September for production of statistical information and documents relating to the Medicare Chronic Disease Dental Scheme and audits thereof was complied with in full on 19 October with the documents tabled in the Senate on 31 October. Statistical returns were compiled and copies of all documents provided to dentists about the scheme since its inception were provided.

An order of 1 November for production of all correspondence between the Health Minister and the Future Fund was complied with on the due date with the tabling of a letter asking the Fund to reconsider its investments in tobacco companies.

Orders were agreed to for further detailed information on the impacts of the Minerals Resource Rent Tax on various revenue measures, including methodologies used to assess the impacts (1 November), on the implementation of the Australian and New Zealand Sustainable Procurement Framework (2 November), on the export of live cattle to Indonesia and advice in relation to areas nominated for conservation under the Tasmanian Forests Intergovernmental Agreement (3 November). No response had been provided to the first-mentioned order by the end of the sitting period while the deadline for the second order is not till the next sitting period. Some documents were tabled in response to the orders for documents on the live export bans (some with redactions) but the response indicated that the ambit of the orders was such that it would be an unreasonable diversion of resources to attempt to identify and examine all documents falling within their scope. Some blanket public interest immunity claims were made in respect of the documents and the redactions, but no statement of harm to the public interest that could ensue from the disclosure was provided as required by the orders of the Senate. A statement tabled in relation to the fourth order indicated that the document sought had not yet been finalised but concluded with a commitment to comply with the order as soon as practicable once final advice had been provided to the Government.

Finally, an order co-sponsored by the Opposition and the Australian Greens for various recommendations and pieces of advice in relation to the troubled Australian Network tender process was met with a refusal on 10 November, the minister's oral statement going slightly further than the usual blanket claim towards identifying the harm that could ensue to the public interest were the documents to be disclosed. However, shortage of time before the limitation of debate on the tobacco packaging bills took effect prevented the issue being followed up comprehensively at the time.

## ANNUAL REPORTS

With annual reports of departments and agencies due at the end of October, a large number of reports were tabled during the fortnight, including important accountability reports on the operation of such legislative schemes as controlled

operations, witness protection and the use of assumed identities. It is somewhat ironic that the reports fall due at a time when opportunities for their consideration are usually truncated by end of year pressure on the legislative program, but several reports were considered on 2 November and many remain on the Notice Paper for future consideration. The reports may also be the subject of scrutiny at additional estimates in February.

Senator Brandis spoke to the annual report of the Federal Magistrates Court on the adjournment debate on 1 November, referring to the proposed restructuring of the FMC, the Semple review of the family law system and the relationship between the Federal Court and the FMC. Senator Brandis referred to action taken by the majority of the magistrates against the Commonwealth in relation to their exclusion from the judicial pension scheme. The magistrates have argued that denial to them of judicial pensions puts the Government in breach of its Chapter III obligations under the Constitution to preserve the independence of the court (including through the financial security of its members). He tabled correspondence from the Australian Government Solicitor to the magistrates' solicitor responding to the magistrates' pleaded case and arguing, in effect, that if the magistrates' action were to succeed, the legal consequence would be that no decision of the FMC would be valid because either the enabling act was invalid, the magistrates' appointments were invalid or they could not validly exercise judicial power under Chapter III. Senator Brandis also tabled a letter of the same date between the same parties offering to settle the case on the basis that the Commonwealth would not pursue costs if the magistrates agreed to withdraw their action. The case in question (*Altobelli v the Commonwealth*) commenced in the High Court and has now been remitted to the Federal Court for trial. It lends an interesting perspective to the nature of disputes between the Senate and the executive which are invariably resolved without recourse to the courts.

## OMBUDSMAN

Two of the reports considered on 2 November were reports by the Commonwealth Ombudsman under the Migration Act on the assessment of detention arrangements. Senators used the opportunity to discuss developments since the estimates week (see [Bulletin No. 256](#)). A ministerial statement tabled on 7 November provided a further opportunity for comment. The Ombudsman's resignation has now taken effect.

## PRIVILEGES COMMITTEE

The Privileges Committee tabled a report on 7 November recommending the incorporation in Hansard of a right of reply by a person named in an interjection by a minister during question time. The first right of reply to an interjection (which is nonetheless part of the proceedings of the Senate if it is reflected in Hansard), the response is probably also the most succinct to date.

## 2012 SITTINGS

The days of meeting for the 2012 sittings were agreed to on 1 November and the schedule for estimates hearings on 2 November.

## VISIT BY US PRESIDENT

Cancelled on two previous occasions, a visit by the US President, Barack Obama, is now scheduled to occur on 16 and 17 November. The President will address a meeting of the House of Representatives, to which senators have been invited. Sometimes referred to in error as “joint sittings”, such meetings are now the usual vehicle to allow foreign Heads of State to address members of parliament. This format was adopted many years ago on the recommendation of both the Procedure Committee and the Privileges Committee following difficulties experienced during joint meetings to receive addresses from former US President, George W. Bush, and President of the People’s Republic of China, Hu Jintao, in 2003.

## COMMITTEE INQUIRIES

Before moving a motion seeking an extension of time for its inquiry into forced adoptions, the Chair of the Community Affairs References Committee, Senator Siewert, took the now unusual but useful step of explaining to the Senate and the committee's large and concerned constituency why the committee was seeking the extension. The motion was agreed to without dissent.

Other reports tabled included on the review of the Professional Services Review Scheme and [Commonwealth funding and administration of mental health services](#) (Community Affairs References), [international parental child abduction to and from Australia](#) (Legal and Constitutional Affairs References) and the [impacts of supermarket pricing decisions on the dairy industry](#) (Economics References).

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## 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 [www.aph.gov.au/Senate/index.htm](http://www.aph.gov.au/Senate/index.htm)

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