



# DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

No. 252

24 June 2011

For the sitting period 14 - 23 June 2011

Retiring senators made valedictory statements on four days during the sitting fortnight, followed by statements from continuing senators about the retirees. Time devoted to these matters meant that there was less time available to debate the many committee reports that were presented during the period, including some major references committee reports on which those committees had spent considerable time. However, unlike the last day of the autumn sittings in March, all reports were able to be presented during the sittings.

## APPROPRIATIONS AND STAFFING COMMITTEE REPORT

The [52nd report](#) of the Appropriations and Staffing Committee was presented out of sitting and tabled on 14 June. It contained the committee's determination of the amounts to be included for the Department of the Senate in the appropriation bill for the parliamentary departments. The committee reported on three new policy proposals that it had agreed should be submitted for funding. It noted that provision for only one of these had been included in the bill and also that the Minister for Finance had failed to follow the procedures set down by the Senate in these circumstances.

## ORDINARY ANNUAL SERVICES OF THE GOVERNMENT AND APPROPRIATION BILLS

On 15 June, the President tabled correspondence between himself and the Minister for Finance and Deregulation on the subject of ordinary annual services of the government. In one of the more positive signs for many years that the government was considering the matter, the minister's correspondence referred to the agreements on parliamentary reform which committed the parties to developing a mechanism to resolve the issue and indicated that the President and the Appropriations and Staffing Committee would be consulted in due course. The current issue dates to the introduction of accrual budgeting in the late 1990s and the inclusion of funds for all new policies in the bill for the ordinary annual services of the government, contrary to the agreement known as the Compact of 1965 (an agreement brokered by government senators at the time) which specifies matters that are not ordinary annual services of the government for the purposes of section 53 of the Constitution.

On a less positive note, the Scrutiny of Bills Committee, in [Alert Digest No. 5](#), drew senators' attention to the inclusion in Appropriation Bill (No. 2) 2011-2012 of very unusual provisions. The bill contained amendments to the *Commonwealth Inscribed Stock Act 1911* to permit increases to the Commonwealth's borrowing limits. Such amendments would not

normally be wrapped up with the annual appropriation bills. Although there is nothing in the Constitution to prevent this, it is a strategy that gives rise to the possibility that any attempt to amend the provisions could be characterised by the spin doctors as an attempt by the Senate to "block supply". The provisions also included two new standing appropriations which the Scrutiny of Bills Committee draws attention to as part of its remit to alert senators to provisions of bills or Acts which:

- inappropriately delegate legislative powers; or
- insufficiently subject the exercise of legislative power to parliamentary scrutiny.

The appropriation bills were not received from the House of Representatives till late on the second last day of sitting, and their consideration by the Senate as the penultimate item of business on the last sitting day before the end of the financial year necessarily led to curtailed debate on the important issues they raised. The bills were passed without amendments or requests for amendments.

## REFERRAL OF TIME-CRITICAL BILLS

The historically low number of sitting weeks in the first half of the year over the past few years has created challenges for the proper scrutiny of legislation during the budget sittings in May-June. Senate legislation committees conduct estimates hearings for two weeks while the House of Representatives continues to sit. Invariably during those weeks, legislation giving effect to budget measures is introduced in the House and is expected to be passed by the Senate by the end of June. In the past, only two sitting weeks were available for the Senate's Selection of Bills Committee to consider proposals for the referral of such bills, for legislation committees to inquire into and report on them, and for the Senate to deal with the legislation.

This is the third year that the Senate has used a mechanism to refer automatically to the relevant legislation committees the provisions of any such bill upon its introduction in the House. The legislation committee may determine, by unanimous decision, not to inquire into a bill where there are no substantive issues that require examination. This is then reported to the Senate. The Education, Employment and Workplace Relations Committee made such a [report](#) on 14 June in respect of the Social Security Amendment (Parenting Payment Transitional Arrangement) Bill 2011. Where committees decide to inquire into bills, the normal inquiry process is undertaken, as occurred with the Family Assistance and Other Legislation Amendment Bill 2011 (Community Affairs Legislation Committee, [report](#) 22 June) and a package of offshore petroleum bills (Economics Legislation Committee, [report](#) 16 June).

## LEGISLATION

As is usual in this period of sittings, a significant number of bills were passed, several with amendments arising from scrutiny by Senate committees. As has become common, many amendments to bills were government amendments responding to issues raised in Senate committee reports. Amendments of this type were made to the following bills:

- Product Stewardship Bill 2011 (Environment and Communications Legislation Committee)
- Combating the Financing of People Smuggling and Other Measures Bill 2011 (Scrutiny of Bills Committee)
- Tertiary Education Quality and Standards Agency Bill 2011 (Education, Employment and Workplace Relations Legislation Committee)
- Customs Amendment (Serious Drugs Detection) Bill 2011 (Scrutiny of Bills Committee).

In other government amendments, Schedule 4 of the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Further Election Commitments and Other Measures) Bill 2011 was excised while it was under consideration by the Economics Legislation Committee and the Remuneration and Other Legislation Amendment Bill 2011 was amended to remove unintended consequences. Opposition amendments to the Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy (Collection) Bill 2011 and the Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy (Consequential Amendments) Bill 2011 were subsequently agreed to by the House.

As well as keeping an eagle eye on potentially offensive provisions of bills (in the context of its terms of reference), the Scrutiny of Bills Committee has conducted a long campaign to improve the quality of explanatory memoranda. It frequently recommends that memoranda be revised to include better explanations for complex provisions. An [addendum](#) to the explanatory memorandum in respect of the Combating the Financing of People Smuggling and Other Measures Bill 2011 was tabled on 16 June, in response to comments from the committee in Alert Digest No. 2 of 2011.

## DISALLOWANCE AND APPROVAL

A motion to disallow the regulations abolishing exit fees payable to financial institutions by consumers who change their mortgages was defeated on 22 June on an equally divided vote.

On 23 June, two motions were agreed to approving determinations made under the *Health Insurance Act 1973*. The requirement for positive approval of these instruments (rather than disallowance) was inserted by amendments made by the *Health Insurance Amendment (Extended Medicare Safety Net) Act 2009* (See [Bulletin No. 235](#)).

On the subject of disallowance, the Remuneration and Other Legislation Amendment Bill 2011, agreed to on 23 June, removed the power of disallowance in relation to determinations by the Remuneration Tribunal of remuneration for members of parliament, in accordance with recommendations of the Belcher Review.

## PRIVATE SENATORS' BILLS

On both Thursday mornings during the fortnight, private senators' bills were considered under the temporary order that is now in place for the remainder of the

year. The Defence Force Retirement and Death Benefits Amendment (Fair Indexation) Bill 2010 was defeated at the third reading on 16 June on an equally divided vote after attempts to amend it in committee of the whole also failed on equally divided votes. One of the proposed amendments would have modified the standing appropriation in the principal Act and provided for the funds required to support the scheme to be separately appropriated by the Parliament. The failure of the bill means that the House will not have an opportunity to consider this option which is commonly used in Senate bills which have financial implications, whether they are government bills or private senators' bills.

In contrast, the Food Standards Amendment (Truth in Labelling—Palm Oil) Bill 2010, introduced by Senator Xenophon, was agreed to with amendments on 23 June and will now be transmitted to the House. The committee stage on the bill provided useful insight into its proposed operation. Proceedings on the Environment Protection and Biodiversity Conservation Amendment (Bioregional Plans) Bill 2011, introduced by Senator Colbeck, were not completed. Two attempts to impose time limits on the consideration of the bill, on 22 and 23 June, failed.

Six new private senators' bills were introduced during the fortnight, including two on the controversial issue of live animal exports and the Opposition's Carbon Tax Plebiscite Bill 2011 which was the subject of an unsuccessful attempt on 22 June to bring it on for expedited consideration. Despite press reports claiming that the bill would be introduced simultaneously in both Houses, the bill was introduced only in the Senate. Procedurally, there is little point introducing the same bill in both Houses because legislation can only result from the Houses agreeing to the same bill in identical terms. This means that a bill must be considered serially by the two Houses. A bill introduced in both Houses might have the same content but it is not the same bill for the purpose of the legislative process. If passed, the bill would require the Australian Electoral Commission to conduct a national plebiscite which it could only do at significant cost. The AEC receives its funding for these purposes through the annual appropriation bills. Although the Carbon Tax Plebiscite Bill has significant financial implications, it is clearly not a bill which appropriates money and there is therefore no constitutional barrier to its introduction in the Senate.

## EQUALLY DIVIDED VOTES

A large number of questions during the fortnight were negatived on equally divided votes. Such votes are likely to be unusual in the new Senate when the Australian Greens will hold the balance of power. If the Greens, with nine senators, vote with the government, with 31 senators, against the remaining non-government senators, the outcome will be a difference of four votes.

## DEFERRED DIVISIONS

There are now several times during a sitting week when divisions must be deferred: before 12.30 pm on Mondays (temporary order); after 4.30 pm on Thursdays; and between 12.45 and 2 pm on Wednesdays (both under standing order 57). For what is believed to be the first time, divisions called in committee of the whole on a bill on

20 June were deferred. The relevant order called for the matter before the Senate to be "adjourned". In the context of committee of the whole, this was interpreted as postponing the question before the chair. The committee then moved on to consider the next (and final) amendments. When a division was called on those amendments too, the chair sought a motion to report progress and the committee was subsequently given leave to sit again at a later hour of the day. When consideration of the bill (the Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Bill 2011) resumed at a later hour, both sets of amendments were negatived and the bill agreed to without amendment.

## TABLED DOCUMENTS

Over the years, tabled documents have taken many forms, from nanochips to garments and wooden message sticks. On 14 June, during the second reading debate on the National Radioactive Waste Management Bill 2010, Senator Ludlam sought leave to table a fabric banner covered in handprints and text in three languages (English and two Indigenous languages) calling for no waste dump at Muckaty in the Northern Territory. He also sought leave to incorporate the document in Hansard. Leave was granted on both counts. In the past, non-standard documents have presented a challenge for Hansard but on this occasion, the Hansard included a full colour image of the banner.

## JOINT SELECT COMMITTEE ON AUSTRALIA'S IMMIGRATION DETENTION NETWORK

Yet another joint select committee was established, bringing to five the number of such committees established since the commencement of the current parliament. The Senate subsequently agreed to an amendment on 22 June to clarify provisions for the election of the chair and deputy chair of the committee. The amendment must now be considered by the House of Representatives.

## ADDRESS BY NEW ZEALAND PRIME MINISTER

The Senate suspended on 20 June for several hours so that senators could attend an address to the House of Representatives by the Prime Minister of New Zealand. The occasion followed the now-common format of an address to the House to which senators were invited rather than a joint meeting of the two Houses. Irresolvable problems arising from the last joint meetings in 2003 and inquiries by both the Privileges and Procedure Committees led to the adoption of the current practice.

## PRIVILEGES COMMITTEE

The Chair of the Privileges Committee, on 16 June, tabled correspondence on the application of parliamentary privilege to working papers and reports of the Australian National Audit Office, confirming the committee's view that such papers come within the meaning of section 16 of the *Parliamentary Privileges Act 1987* and are therefore protected

by parliamentary privilege. However, the committee also gave in principle support to clarifying amendments, to avoid doubt.

## COMMITTEES MEETING WHILE THE SENATE IS SITTING

Standing order 33(1) sets out conditions under which committees may meet while the Senate is sitting. Meetings outside these parameters require the authorisation of the Senate (as the parent body which has first call on its members). An unusually large number of motions was moved during the fortnight to authorise committees to meet, no doubt a reflection of the very heavy workload of committees as they strove to finalise reports before the end of the "old" Senate and the retirement of twelve senators, most of whom had a heavy involvement in committee work. On several occasions, however, proceedings in the Senate were disrupted by the unavailability of members who were due to speak in the Senate but who were otherwise occupied in committees. The matter will no doubt come under consideration in due course by the Chairs' Committee established under standing order 25(10).

## SENATORS' INTERESTS COMMITTEE

The Senators' Interests Committee presented a [report](#) on 22 June recommending that the Senate endorse the committee's recommendation to publish the Register of Senators' Interest online from the commencement of the new Senate. The committee first reported on this proposal in 2009. The recommendation was adopted.

## PROCEDURE COMMITTEE

The Procedure Committee presented its [second report of 2011](#) on 22 June which covered a number of topics although it recommended no changes to procedures. The committee had considered the administrative practices underlying the consideration of orders of the day relating to private senators' bills and recommended some practical measures including minor changes to the Notice Paper. It also made suggestions to restore some discipline to the procedures for formal motions, to discourage the presentation of committee reports on last sitting days when only cursory debate, if that, is possible (as occurred with the many reports presented on 23 June), and to restore the practice of considering non-controversial legislation at a specified time on Thursdays. The Senate adopted the report.

## COMMITTEE REPORTS AND NEW INQUIRIES

Committee reports presented during the period included reports on exposure drafts of Australian privacy amendment legislation, the Asian honey bee, pilot safety, the impacts of rural wind farms, cyber safety, the Australian film and literature classification scheme, estimates and many reports on bills.

As old inquiries were completed, a significant number of new matters were referred. A proposed reference of matters relating to alleged events at the John Oxley Youth Detention Centre in Queensland in the late 1980s, which have been the subject of five

previous inquiries, including a dedicated select committee in 2004, was defeated on 23 June, again on an equally divided vote. Successful references included the controversial live animal export trade, the approval and regulation of medical devices (both subjects covered in recent ABC TV's *Four Corners* programs), the funding and administration of mental health, aspects of the administration of the Department of Parliamentary Services, Australian government assistance to victims of overseas kidnapping and ransom demands, and the administration of the Pharmaceutical Benefits Scheme.

Consistent with past practice, senators were appointed to committees on 23 June with effect from 1 July. For details, see the *Journals of the Senate*.

## NEW SENATE

The new Senate meets at 10 am on 4 July when the Governor-General will attend to swear in senators elected at the August 2010 election. The Senate will then elect a President and Deputy President.

---

## 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)

Inquiries: Clerks Office  
(02) 6277 3364