



DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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For the sitting period 18 — 28 June 2012

LEGISLATION

The Senate's focus in the last two weeks of the winter sittings was on legislation, with a large number of bills passed during the period. Although 19 bills were passed on the first day of the fortnight, the first business on the following day was to put into place a lengthy and complex time management mechanism to provide for consideration and determination of a further 36 bills by lunchtime on Wednesday 27 June.

A time management mechanism has been employed in two out of three sitting periods this year, including for uncontested and relatively non-controversial bills. This is a highly unusual situation in the Senate where such devices have normally been used only in respect of the most contentious bills. For details of the operation of such orders see [Bulletin No. 261](#). Few bills passed with amendments and only one time-managed bill, the National Broadcasting Legislation Amendment Bill 2010, had non-government amendments agreed to.

When such arrangements are put in place to cover a relatively extended period of time, it is inevitable that something will arise that requires urgent action. In this case, it was the High Court's decision in *Williams v Commonwealth*, which was handed down on 20 June. The case concerned a challenge to the validity of the funding of the schools' chaplaincy program, a program initiated under the previous government and continued by the present government. While expenditure for the program had been authorised through the annual appropriation Acts, it was not otherwise authorised by legislation but relied on the use of the executive power. For a variety of reasons, a majority of the Court found that the scope of the executive power did not extend to authorising expenditure of this nature and the funding agreement in question was therefore invalid. The decision was directed at a particular funding agreement for expenditure under a specific program of grants, but it clearly had much wider implications for the funding of a broad range of other government programs which were not supported by specific legislation. It was reported that 5 to 10 percent of government expenditure had been put in doubt by the decision and ameliorative action was therefore required.

In response, the government introduced a bill to validate expenditure previously authorised only by appropriation legislation and to provide a mechanism for parliamentary approval of all such payments in the future. However, the chosen mechanism is by regulation so the bill in effect cedes to the executive the power to approve such expenditure, subject only to the disallowance power. The bill was introduced into the House of Representatives on 26 June and passed the same day after attempts to amend it to "sunset" the mechanism were unsuccessful. It was introduced in the Senate on 27 June with the Government attempting to subject it to a time

management motion as well. The non-government parties, while accepting the urgency of the need to deal with the immediate fallout from the Williams case, declined to support the consideration of the bill under a guillotine and amended the motion accordingly.

The bill, the Financial Framework Legislation Amendment Bill (No. 3) 2012, has three targets: the validation of funding for the school chaplaincy program; the validation of other funding possibly affected by the Williams decision; and the creation of a mechanism to authorise expenditure of a similar nature in the future. It is deeply ironic that a decision that will be seen as shifting the balance between the Parliament and the executive in favour of the former should be responded to by the Parliament with a mechanism that involves the delegation to the executive of Parliament's fundamental functions with respect to the authorisation of appropriations. The mechanism was justified during the debate as necessary to allow the Government to enter into contracts in the future. Amendments moved by the Opposition and the Australian Greens to modify the mechanism were defeated and the bill passed without amendment on 27 June. The passage of the bill in this form exemplifies the mischief of rushed consideration and the failure of parliamentary scrutiny.

The appropriation bills were among the bills passed by the Senate under a limitation of time. An Opposition amendment to Appropriation Bill (No. 2) to remove the provisions raising the Government's borrowing limit by another \$50 billion was unsuccessful (see [Bulletin No. 262](#)).

Further tragedies involving asylum seekers travelling by boat led to the Government bringing on for debate in the House of Representatives a private member's bill to provide for the offshore assessment of asylum seekers in accordance with regional cooperation agreements. The bill was passed and transmitted for concurrence to the Senate where special arrangements for its consideration were implemented by means of motions moved by leave on 28 June.

The motions dispensed with all other business, including question time, to ensure the Migration Legislation (The Bali Process) Bill 2012 could be dealt with. Normal housekeeping was deferred till after the fate of this bill and two other packages was determined. The bill was defeated at its second reading but the other packages, which included the latest Northern Territory intervention amendments (the Stronger Futures bills), were agreed to. The Stronger Futures bills were considered extensively in committee of the whole and eventually agreed to with amendments, the only example during the fortnight of what might be regarded as normal legislative process for the Senate.

If there is a prize for worst short title of the year, then Paid Parental Leave and Other Legislation Amendment (Dad and Partner Pay and Other Measures) Bill 2012 must surely be a contender, followed closely by the Family Assistance and Other Legislation Amendment (Schoolkids Bonus Budget Measures) Bill 2012.

CASUAL VACANCIES

Two senators resigned from the Senate since its last meeting, Senators Sherry and Bob Brown, both from Tasmania. The vacancies, having been notified to the Tasmanian Governor, were reported to the Senate on 18 June. The Tasmanian Parliament met to

choose replacements on 21 June and Senators Thorp and Whish-Wilson were sworn in and took their seats on 22 June. This is only the second occasion when two casual vacancies from the same state were filled at the same joint sitting of the state parliament, the other occasion being in 1994 in New South Wales when Senators Belinda Neal and Bob Woods were chosen to replace Senators Bronwyn Bishop and Kerry Sibraa. Senator Whish-Wilson made his first speech on 27 June, while Senator Thorp will make hers in August.

ORDERS FOR PRODUCTION OF DOCUMENTS

The regular report by the Australian Competition and Consumer Commission on anti-competitive and other practices by health funds and providers in relation to private health insurance was tabled on 18 June. This regular report may attract greater interest as the impact of the abolition of the 30% rebate on private health insurance premiums takes effect from the beginning of the new financial year.

An order for production of documents relating to changes in the terms of reference of the Financial Ombudsman Service was agreed to on 25 June. The order fell due on 28 June but had not been complied with before the Senate rose for the winter adjournment.

PROCEDURE COMMITTEE REPORT

The Procedure Committee's First report of 2012 was presented on 26 June 2012 and adopted the following day. It recommended that the current temporary order providing for consideration of private senators' bills on Thursday be extended till early 2013 and that, for the same period, an additional temporary order be agreed to that provides for non-controversial bills to be considered from 12.45 pm on Thursdays. Minor changes to standing order 73 and the order of the Senate relating to the storage of documents off-site were agreed to, to allow administrative measures to be implemented, including the preparation of an online database of questions on notice and answers.

OTHER COMMITTEE REPORTS

Legislation committees presented their reports on the 2012–13 budget estimates on 26 June. Several of the reports were debated on presentation and various matters raised, including a case of possible misleading evidence given to the Rural and Regional Affairs and Transport Legislation Committee (see [Bulletin No. 263](#) under *Potentially misleading evidence*). The reports themselves are a useful summary of the issues covered, together with some commentary on procedural issues. By far the most common complaint was the invocation by officers of the discredited excuse that they cannot answer a question because it is “advice to government”. The resolution of the Senate of 13 May 2009 explicitly rules this out as a ground for claiming public interest immunity but the message apparently continues to fall on deaf ears. The Economics Legislation Committee's report gave an account of its consideration of the issue of the ordinary annual services of the government, an issue which has been the subject of much commentary in these pages. The Community Affairs Legislation Committee's report noted that it was separately pursuing an issue of possible misleading evidence involving Indigenous Business Australia, while

the Education, Employment and Workplace Relations Legislation Committee reported on the circumstances in which it recalled officers of Fair Work Australia to clarify answers to questions on notice that arrived after their initial appearance. Owing to the time management mechanism, the appropriation bills were actually passed before the legislation committee reports were presented. Unlike the situation with reports on bills, there is no requirement for the estimates reports to be presented before the appropriation bills can proceed, although this would clearly be desirable for the better information of senators.

Numerous other reports were presented including reports of the Legal and Constitutional Affairs Committees on the Marriage Equality Bill and on prospective marriage visas. The former inquiry attracted the largest number of submissions ever received by a Senate committee, numbering well over 75,000, many of which were form letters or single line responses. The committee published over 300 substantive submissions on the bill.

The Finance and Public Administration Legislation Committee presented an interim report on the performance of the Department of Parliamentary Services addressing specific heritage management issues and the disposal of two billiard tables, concerns about which sparked the inquiry. In a thorough review of these issues, the committee has made only one recommendation at this stage in relation to funds to complete the Central Reference Document recording the architect's design intent for all aspects of the building.

The rate of referral of bills to legislation committees continues at a high level. For the most part, substantive inquiries ensue but a report by the Rural and Regional Affairs and Transport Legislation Committee on the provisions of the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 1) 2012 drew the Senate's attention to the fact that it received no submissions, and that the bill contained only technical corrections. The committee noted that senators should be mindful of the use of Senate resources when referring bills to committees for inquiry and report. Reports of this nature are very rare, indicating that most inquiries add significant value to the legislative process.

The new Parliamentary Joint Committee on Human Rights presented its first report during the fortnight on the committee's activities since its establishment. It also conducted its first public examination of a bill, the Social Security Amendment (Fair Incentives to Work) Bill 2011 during which it took evidence from representatives of the Australian Council of Social Service and departmental officials.

On 18 June, the President tabled correspondence from the President of the Law Council of Australia urging the Senate to adopt the recommendations made by the Scrutiny of Bills Committee in its report on its future direction and role.

The Joint Committee of Public Accounts and Audit presented a statement on 18 June, affirming the Presiding Officers' choice of Mr Phil Bowen as the inaugural Parliamentary Budget Officer.

A proposal for a new Joint Select Committee on the National Disability Insurance Scheme was rejected on 27 June.

Details of reports tabled and new inquiries referred to committees may be found in the *Senate Daily Summary*.

ACCESS TO OLD COMMITTEE DOCUMENTS

Under standing order 37(3), the President is authorised to grant access to unpublished committee documents after they have been in the custody of the Senate for 30 years. On 19 June the President reported to the Senate that, following a request from a researcher who was preparing a program to be broadcast on SBS, he had granted access to records of the Select Committee on Civil Rights of Migrant Australians (1973-1974). The committee lapsed on prorogation and was not re-established in the next session. It did not present a final report.

GOVERNMENT RESPONSES

Several government responses were tabled during the period, with some attracting debate, including on the age of the report being responded to. One such response was to a 2005 report of the Rural and Regional Affairs and Transport Committee on Australia's future oil supply and alternative transport fuels. The time taken to provide the response was heavily criticised.

The Presiding Officers also presented a further response on 29 June to the recommendations of the Joint Publications Committee on the electronic Parliamentary Papers Series.

ODGERS' AUSTRALIAN SENATE PRACTICE

The thirteenth edition of Odgers was tabled by the President at the conclusion of sittings on 29 June. It is also published online at http://www.aph.gov.au/About/Parliament/Senate/Powers_practice_n_procedures/odgers13.

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 <http://www.aph.gov.au/About/Parliament/Senate>.

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