



# DEPARTMENT OF THE SENATE

## PROCEDURAL INFORMATION BULLETIN

No. 265

24 August 2012

For the sitting period 14 — 23 August 2012

### LEGISLATION

The first week of the sitting period was dominated by the Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2012 which gave partial effect to recommendations of an expert committee appointed in June after the defeat in the Senate of the Migration Legislation (The Bali Process) Bill 2012. The bill provides for parliamentary approval (either by affirmative resolution of both Houses or tacitly by lack of disapproval) of instruments designating locations where offshore processing of asylum seekers attempting to reach Australia by boat will occur. While information about those locations and their facilities is to be tabled in each House, detailed questioning by Australian Greens senators during the committee of the whole stage clarified that the absence of any of the required information would not inhibit or invalidate the designation. Passage of the bill paves the way for the reopening of facilities on Nauru and Manus Island in Papua New Guinea, subject to an affirmative resolution in both Houses. By the end of the sitting period, the requisite instruments had not been tabled.

Variations to the routine of business were agreed to by the Senate to facilitate consideration of the regional processing bill which led to the Senate adjourning on 16 August at a slightly later hour than usual.

Numerous other bills were agreed to, mostly of a routine character and mostly without amendment. Significant committee stages occurred on the Criminal Code Amendment (Cluster Munitions Prohibition) Bill 2010 (which had been on the Notice Paper for nearly two years) and the Cybercrime Legislation Amendment Bill 2011, with Senator Ludlam moving numerous amendments to both bills, all of which were defeated. Only government amendments were agreed to in respect of the latter bill.

A private senator's bill, the Health Insurance (Dental Services) Bill 2012 [No. 2], was considered during the time for private senators' bills on 23 August and defeated at the second reading. The Marriage Equality Amendment Bill 2010 was also considered during general business later the same day.

### CASUAL VACANCY

Senator Fisher submitted her resignation to the President of the Senate on 14 August having first made a brief statement to the Senate. The following day, the President tabled the letter of resignation together with a copy of his notification to the Governor of South Australia that a vacancy existed in the representation of South Australia. It is expected that the South Australian Houses will meet together on 5 or 6 September to choose a replacement.

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## ORDERS FOR PRODUCTION OF DOCUMENTS

The annual [report](#) on unproclaimed legislation required by standing order [139\(2\)](#) was tabled on 15 August and listed 23 Acts which had been passed by the Parliament but whose provisions had not come into effect pending a proclamation. The order came into being because of concerns that the executive could delay the commencement of Acts of the Parliament without accounting for the delay. Of the Acts listed, 14 (or 60%) had default commencement provisions allowing them to come into effect if a proclamation had not been made within 6 (or in one case 12) months after receiving Royal Assent or on a specified date; five (or around 22%) were awaiting legislative action by the states and territories or action by other countries in relation to international treaties; while the remaining were repeat offenders (see [Bulletin No. 254](#)), the oldest dating back to 1981. The development of the default commencement provision as a standard inclusion was as a direct result of the attention given to this issue in the late 1980s by senators and Senate officers.

An order for production of documents relating to changes in the terms of reference of the Financial Ombudsman Service, agreed to on 25 June, was complied with in full on 22 August (but not by the due date). An order for the production of legal advice on the Murray-Darling Basin Plan was met with a statement that the Government would not be releasing the advice and did not do so as a matter of convention and practice. The statement, tabled on 14 August, went on to give some general reasons why disclosure of legal advice could prejudice the Government's position in litigation.

An order for production of information about the number of free carbon permits issued or expected to be issued to Australian export businesses was agreed to on 23 August but another order for ongoing production of monthly revenue figures for the minerals resource rent tax was defeated on 15 August. Also defeated on 23 August was an order for production of documents relating to the Reserve Bank's knowledge of possibly illegal activities of its partly owned note printing companies. Notice was given on the same day of an inquiry into the matter.

The usual travel expenditure details for senior officers and members' and senators' travel funded by the Department of the Senate were tabled on 16 August.

## DISALLOWANCE

A motion to disallow a catch quota for the Australian Small Pelagic Fishery (which completely surrounds Tasmania and extends north to the NSW/Queensland border and west to just north of Perth) was debated on 22 and 23 August as a means of inhibiting the imminent arrival in that fishery of the so-called super-trawler or factory ship, the FV *Margiris*. During debate on 22 August, the mover of the motion, Senator Whish-Wilson tabled a unanimous resolution of the Tasmanian House of Assembly, agreed to earlier that day, indicating that the House would not support the operation of the FV *Margiris* in Tasmanian waters until it could be satisfied that the vessel's operations would not impact adversely on recreational fishing. Several speakers later, a parliamentary secretary tabled the responsible minister's response to the Tasmanian motion, which indicated that if an

application was received for the FV *Margiris* to fish in Australian waters, the responsible authority would consider it in accordance with the criteria set out in relevant fisheries and environmental legislation which require principles of ecologically sustainable development to be applied. Scientific views on the impact of the trawler are apparently mixed. On 16 August, the trawler was also the subject of a motion (defeated) and a petitioning document.

Debate on the disallowance motion continued on the afternoon of 23 August, taking precedence over general business in accordance with the rules in standing orders [58](#) and [59](#). When the debate concluded, a division was called for but, as it was after 4.30pm on Thursday when divisions cannot take place, the division was deferred till the next sitting day. Neither of the major parties indicated support for the motion. Fortunately, there are still some days to run under the timetable prescribed by the *Legislative Instruments Act 2003*. Under those provisions, failure to resolve a disallowance motion by the end of the fifteenth sitting day after notice has been given results in the instrument being deemed to have been disallowed.

On the last day of the sitting period, Senator Siewert gave notice to disallow five separate instruments concerning various aspects of the Stronger Futures legislation (see [Bulletin No. 264](#)).

## DIVISION OF QUESTION

Under standing order [84\(3\)](#), the chair may order a complicated question to be divided. The chair does so when senators indicate they wish to vote different ways on parts of a question and the question is capable of division. A motion relating to press freedom was divided on 22 August and another relating to wind farms and airborne wildlife was divided on 23 August. In the first case, one part of the motion was agreed to but both parts of the second motion were defeated.

## COMMITTEES

A new select committee on electricity prices was established on 23 August, to report by 1 November 2012 on extensive terms of reference. The committee is to have a Government chair but no deputy chair. The establishment of the new committee followed the winding up of the Select Committee on Australia's Food Processing Sector which presented its final report on 16 August.

Amongst reports presented during the period were:

- the [report](#) by the Legal and Constitutional Affairs Legislation Committee on the Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Bill 2012 and a related bill (see [Bulletin No. 261](#)) which recommended several clarifying amendments;
- a [report](#) on health services and medical professionals in rural areas by the Community Affairs References Committee (which has also taken up a major new reference on social determinants of health);

- the first [report](#) of the Parliamentary Joint Committee on Human Rights which has chosen to follow a similar reporting model to that used by the Scrutiny of Bills Committee (whose chair, Senator Macdonald, in presenting the committee's report on 15 August made some very useful remarks on its approach to its work);
- a [report](#) on certain evidence given by Indigenous Business Australia to the Community Affairs Legislation Committee which considered the possibility that false or misleading evidence had been given but concluded that there was no basis for the committee to raise it as a matter of privilege;
- the [annual report](#) of the Appropriations and Staffing Committee, including correspondence exchanged in 2012 between the President and the Finance Minister on the issue of ordinary annual services of the government.

The Military Court of Australia Bill 2012 and a related bill create a new military court to replace the previous model found by the High Court in 2009 to be constitutionally invalid. The bills were referred both to the Legal and Constitutional Affairs Legislation Committee and the Foreign Affairs, Defence and Trade Legislation Committee which has had a very longstanding interest in, and influence on, developments in military justice. The latter committee [reported](#) to the Senate on 14 August that it had decided not to attempt to duplicate the work of the first-mentioned committee, but would provide it with a comprehensive background paper based on its previous experience with the issue.

## PRIVILEGE

The findings of the Privileges Committee in its [151st Report](#) (relating to a possible contempt involving improper interference with, or penalty imposed on, a witness) were endorsed by the Senate on 23 August. The committee concluded that a contempt should not be found.

## FINANCIAL INDEPENDENCE OF PARLIAMENTS

The President tabled a [communiqué](#) on 15 August issued by Australian Presiding Officers attending the 43<sup>rd</sup> Conference of Australasian and South West Pacific Presiding Officers and Clerks and calling for greater financial independence for parliaments to preserve their ability to hold the executive to account.

## INTERESTING MOTIONS

Two separate motions agreed to on 21 August expressed concern at the imprisonment of members of the Russian girl band, Pussy Riot, for “hooliganism motivated by religious hatred” following a non-violent performance in a Moscow cathedral that was critical of Russian President, Vladimir Putin. The sentencing of the women has drawn world-wide criticism.

On the same day, the Senate agreed to a motion of apology to the late athlete, Peter Norman, famous for winning the silver medal in the men's 200 metre sprint at the Mexico

City Olympic Games in 1968. His gesture of solidarity with the two black American athletes who won gold and bronze went unacknowledged at the time and was said to have led to his omission from the official guest list at the Sydney Olympics in 2000.

## NEW LOOK NOTICE PAPER AND RED

Following the Procedure Committee's First Report of 2012 (see [Bulletin No. 264](#)) the Notice Paper appeared for 14 August in its revised form. Much of the information that is not required on a daily basis is now published only in the online version, allowing a trimmer printed version with correspondingly lower production costs. The Order of Business or Senate Red also underwent a revamp with the removal of outmoded formatting and much greater use of links to online resources such as bills home pages.

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

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