



DEPARTMENT OF THE SENATE

PROCEDURAL INFORMATION BULLETIN

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For the sitting period 29 October — 1 November 2012

LEGISLATION

The Defence Trade Controls Bill 2011 and a related bill were the subject of extensive debate on 29 October and passed with numerous Government, Opposition and Australian Greens amendments. The bills had been the subject of a disputed committee reference in the previous sitting period (see [Bulletin No. 267](#)) and have had a troubled history. The control regime to be implemented will be the subject of a two-year transition period, providing an opportunity to monitor progress and assess whether the now-identified but nonetheless unintended consequences of the scheme will materialise. In the second reading debate, a Government senator was scathing in his comments about the consultation process and what he described as deliberately misleading material in the explanatory memorandum. Other senators were equally critical of the lack of consultation by the Defence establishment with the academic community.

The two-year transition period was to be effected by a government amendment delaying the commencement of various provisions, including offence provisions, until a review had been completed. That amendment was withdrawn, however, after its operation was queried and a much more detailed amendment moved by the Australian Greens was agreed to in its place. The review mechanism, a Strengthened Export Controls Steering Group with a brief to report to the responsible ministers, was also effected by an amendment moved by the Australian Greens. A successful Opposition amendment to clarify matters not covered by the legislation was regarded by the Government as being “fatal” to the scheme, was disagreed to by the House of Representatives and was not insisted upon by the Senate when the bill was returned from the House. Thus the second disagreement between the Houses for the 43rd Parliament was resolved as swiftly as the first (see [Bulletin No. 267](#)).

Other significant legislation considered included the Australian Charities and Not-for-profits Commission Bill 2012 and a related bill which set up a regulatory regime for that sector. Opposition to the bills was based on concerns about the amount of red tape to be imposed on such bodies while support was based on the need for transparency and accountability for the significant taxation concessions granted to them. Numerous reports including a Productivity Commission report, the Henry tax review and a 2010 Economics Legislation Committee report on a private senator’s bill introduced by Senator Xenophon had influenced the policy but there remained fundamental differences of view about its expression. The bills passed, against the wishes of the Opposition, with further Government amendments. These included amendments to delay the commencement of regulations prescribing governance and external conduct standards until after either affirmative resolutions in each House or the conclusion of the disallowance period. The amendments were subsequently agreed to by the House of Representatives, paving the way for the scheme to commence next year.

Bills are considered in committee of the whole if amendments are circulated or if any senator requests a committee stage. Such a request may be made at any point before the motion for the third reading is moved. The Social and Community Services Pay Equity Special Account Bill 2012 and a related bill had a brief committee stage on 31 October to allow a senator to ask some questions about the bill and put other questions on notice. The request was made after the motion for the second reading was agreed to. There is no requirement that the request take any particular form and it may be made ‘off the record’ to the chair or clerks at the table. In this case it was made on the record.

The influence of Senate committees continued to be apparent. The Government moved amendments to the Migration Legislation Amendment (Student Visas) Bill 2012 as recommended by the Legal and Constitutional Affairs Legislation Committee.

The Government sought to exempt a large number of bills from the provisions of standing order [111](#), allowing them to be considered before the end of the year. A motion to exempt the clean energy package had not been dealt with by the end of the period.

SUPPLEMENTARY APPROPRIATIONS

The Government, on 30 October, tabled particulars of proposed expenditure in relation to the implementation of the report of the Expert Panel on Asylum Seekers (the “Houston report”), together with a Portfolio Supplementary Estimates Statement for the Immigration and Citizenship portfolio to which all the supplementary funding is to be directed. On the same day, two appropriation bills were introduced into the House of Representatives, one being for the ordinary annual services of the Government in relation to the report’s implementation and the other for “certain expenditure”. This division reflects the terms of section 53 of the Constitution.

On this occasion, the characterisation of enhancements to existing programs of the Department of Immigration and Citizenship as “ordinary annual services of the Government” would appear to be within the agreed compact between the Senate and the Government. However, the minimal information about what the money is actually to be spent on, discernible from two sets of particulars, two explanatory memoranda and a Portfolio Supplementary Estimates Statement, does little to assist the Parliament. In particular, the costs of establishing regional processing centres on Nauru and Manus Island are described as “nfp” (not for publication). While this is not a new phenomenon, it is surely incompatible with the right of Parliament to be informed of details (or “particulars”) of the expenditure for which its approval is sought. However, as the Chief Justice noted in [*Combet v Commonwealth \[2005\] HCA 61*](#) at paragraph 5, it is for Parliament to determine the degree of specificity it requires in expressing the purposes of an appropriation.

The bills were introduced in the Senate on 31 October and adjourned under the provisions of standing order [111](#) till the first sitting day next year. They were subsequently exempted from those provisions on 1 November.

DISALLOWANCE

Five separate motions for the disallowance of various instruments concerning aspects of the Stronger Futures legislation (see [Bulletin No. 265](#)) were moved and debated together, by leave, on 29 October and negatived.

GOVERNMENT RESPONSES TO COMMITTEE REPORTS

The timely presentation of government responses continued with the tabling out of sitting on 16 October of a response to the report of the Foreign Affairs, Defence and Trade References Committee on Procurement Procedures for Defence Capital Projects (presented 30 August 2012) but performance remains very uneven. The long-awaited response to the May 2009 report of the Select Committee on Men's Health was finally received on 24 October 2012 but it could be assumed that the former Environment, Communications, Information Technology and the Arts References Committee had given up waiting for a response to its September 2006 report on women in sport and recreation in Australia. The response was tabled on 1 November and the six year delay was duly noted during debate later that day.

FURTHER SUPPLEMENTARY ESTIMATES HEARING

As foreshadowed in [Bulletin No. 267](#), the Finance and Public Administration Legislation Committee held a further [estimates hearing](#) on 29 October to hear from the Future Fund Management Agency and the Chairman of the Board of Guardians of the Future Fund, Mr David Gonski. Questions covered the share portfolio of the Fund, including its investments in tobacco companies, and governance arrangements for dealing with conflicts of interest of its board members.

ORDERS FOR PRODUCTION OF DOCUMENTS

Proposed orders for the production of documents relating to clean energy program costings, the minerals resource rent tax and a study of community safety and wellbeing were all negatived on 1 November. An order for a report and documents relating to the Northern Territory Emergency Response was agreed to on the same day and falls due on 27 November.

COMMITTEE REPORTS

Several committee reports were presented during the period, including the unanimous report of the [Select Committee on Electricity Prices](#). The report included an account of an unauthorised disclosure of the committee's draft report and steps taken by the committee to investigate it. Although the committee was unable to identify the source of the disclosure, it indicated that the disclosure was a serious breach of the committee's confidence and that it would be raising it as a matter of privilege under standing order [81](#). In examining the matter, the committee followed the procedures set out in resolutions of the Senate of [20 June 1996](#) and [17 September 2007](#).

The Parliamentary Joint Committee on Human Rights continued its work of scrutinising bills and legislative instruments in accordance with its enabling statute. In its Sixth report of 2012, the committee again published ministerial responses to earlier reports, as well as its first practice note setting out the underlying principles of scrutiny it applies and providing guidance on its expectations of information that should be provided in statements of compatibility.

The impact of the Scrutiny of Bills Committee continues to be recognised by the tabling of addenda to explanatory memoranda responding to requests by the committee for additional material to be provided. Addenda to the explanatory memoranda to the Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012, the Public Services Amendment Bill 2012 and the Defence Trade Controls Bill 2012 all specified that they were in response to the committee's concerns.

DAYS OF MEETING AND ESTIMATES HEARINGS FOR 2013

Motions to set the days of meeting for 2013 and the three rounds of estimates hearings were agreed to on 1 November. With an election due in the latter part of 2013, the days for that period may be considered somewhat hypothetical.

ANNUAL REPORTS

Annual reports of most government agencies are required to be tabled by 31 October. As a consequence, a very large number of such reports were received during the week and a significant number taken note of.

ANOTHER JOINT SELECT COMMITTEE

One of the last items of business dealt with by the Senate for the week was a message from the House of Representatives proposing the establishment of a Joint Select Committee on Constitutional Recognition of Local Government. The Senate agreed to the proposal and appointed some members shortly afterwards. The committee secretariat will be provided by the Department of the House of Representatives.

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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