



# DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

No. 270

15 February 2013

For the sitting period 5 — 7 February 2013  
and Additional Estimates 11 — 15 February 2013

## LEGISLATION

The major item of legislation for the week in terms of the length of debate was the Water Amendment (Water for the Environment Special Account) Bill 2012. The bill establishes a special account for various purposes associated with the management of water infrastructure in the Murray-Darling Basin, to improve its water efficiency. The bill also set out a schedule of amounts to be credited to the special account in particular financial years.

Special accounts are an interesting financial vehicle in constitutional terms, raising questions about how the Senate's financial powers under [section 53](#) of the Constitution might apply. Special accounts are funded by a standing appropriation in the *Financial Management and Accountability Act 1997*. [Section 21](#) of that Act appropriates the consolidated revenue fund for special accounts with specified purposes, established by other Acts. When a special account is created, there is therefore an appropriation, and such bills are classified by Senate officers accordingly to assist in the identification of section 53 issues.

Amendments circulated by Senator Hanson-Young compressed credits to the special account from occurring over a period of 10 years to a period of five years and also changed the amounts to be credited in those years, but not the total amount to be credited. Where such changes are a matter of timing and not overall quantum, the Senate has taken the view that the third paragraph of section 53 does not apply and the changes may be made by ordinary amendment, not requests for amendments. The Chairman of Committees made a statement to that effect on 6 February at the commencement of the committee stage, indicating that the amendments were in order. He signalled, however, that if only some of the amendments were agreed to and the effect was to increase the total amount payable from the standing appropriation, then it may be necessary to revisit the matter.

In the event, the amendments were not agreed to, so the further question did not arise.

One other feature of the debate was of minor procedural interest, and that was the participation in the second reading debate of a minister in her capacity as a senator for South Australia. As is customary in such circumstances, the minister indicated the nature of her contribution and stressed that she was not closing the debate.

The Parliamentary Service Amendment Bill 2012 was introduced by the President of the Senate in the final sitting week of 2012 and referred to the Finance and Public Administration Legislation Committee for inquiry and report over the summer break. The committee's inquiry focused on how the Parliamentary Service Amendment Bill compared with the parallel Public

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Service Amendment Bill, then before the Senate. The Public Service Amendment Bill had been subject to extensive comment by the Scrutiny of Bills Committee, comments which were taken into account in the preparation of the explanatory memorandum to the Parliamentary Service Amendment Bill. The committee's report canvassed these issues in detail and recommended passage of the bill.

To expedite consideration of the bill, the government moved a motion for the Parliamentary Service Amendment Bill to be taken together with the Public Service Amendment Bill for their remaining stages, and agreement was reached for the bills to be considered during the time for private senators bills on Thursday morning (the Parliamentary Service Amendment Bill, technically, being a private senators bill). The bills were agreed to on 7 February with two minor and technical amendments to the Parliamentary Service Amendment Bill. That bill was agreed to by the House of Representatives on 13 February, the Public Service Amendment Bill already having passed the House.

The list of private senators' bills passed into law grew by one during the sitting week when the House of Representatives agreed to the Low Aromatic Fuel Bill 2012 [2013] without amendment. The bill was the subject of commentary in Bulletin No. [269](#).

## COMMITTEES

The Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples presented its first report, on the Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012 on 30 January 2013. The report included some consideration about how the committee might go about its future work, one suggestion being the appointment of parliamentary commissioners to assist it. Were the committee to proceed with this suggestion, it would add to the unusual features noted in Bulletin No. [269](#).

The other new joint select committee (on constitutional recognition of local government) was granted an extension by both Houses that would take its work beyond the date of the announced general election. However, joint committees will cease to exist once the House of Representatives is dissolved, an event which has been foreshadowed as occurring on 12 August for a general election on 14 September.

Several new inquiries were agreed to, for details of which see the [Senate Daily Summary](#).

A response by the Department of Parliamentary Services to the report of the Finance and Public Administration Legislation Committee on the department was presented by the President on 7 February. That the response was a departmental one and not from the Presiding Officers was the subject of questions during additional estimates (FPA, 11/2).

## ORDERS FOR PRODUCTION OF DOCUMENTS

Orders for details of revenue estimated to flow, and actually flowing, from the Minerals Resource Rent Tax have been the subject of comment in numerous Bulletins. It had been expected that revenue figures would be produced in the Government's monthly financial statements, but it was announced by the Finance Minister over the summer break that advice from the Treasury and Tax Office was that details of the revenue collected could not be disclosed because of the confidentiality provisions in the *Taxation Administration Act 1953*. This extraordinary claim was based on the new confidentiality provisions inserted into the Act by the *Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010* which limited the information that could be provided by tax officers to the minister, even for the purposes of the minister's participation in proceedings in Parliament. This is one of the very few provisions on the Commonwealth statute books explicitly limiting the operation of parliamentary privilege.

Fortunately for the cause of accountability, the scope of the limitation is very narrow and does not affect the ability or duty of tax officers to provide information to a parliamentary committee. This outcome was achieved only after the Privileges Committee pointed out that the bill, as originally drafted, made it a criminal offence for tax officers to provide certain information to Parliament, in direct contradiction to the offence in the *Parliamentary Privileges Act 1987* which protects witnesses against being penalised for giving evidence, and in defiance of a protection that has existed for centuries under the law of parliamentary privilege (see the committee's 144th [report](#), Bulletin Nos [240](#), [242](#), and Odgers, 13<sup>th</sup> ed., p. 70).

Instead of ordering the minister to produce information which it would have been unlawful for the Tax Office to provide to her, the Senate, on 6 February, ordered the Tax Commissioner to produce the information directly to the Economics References Committee which would then determine whether to publish it. In agreeing to the order, the Senate noted that the information concerned the tax affairs of companies and would not breach the confidentiality of natural persons. The Senate also noted the public interest in revenue from different taxes being transparently accounted for in order to provide confidence in administration of the tax system (not to mention accountability to the Parliament). The committee received and published the information on 8 February, following the Treasurer's announcement of the figure after the receipt of further legal advice apparently now clearing publication of the information.

Another order for documents agreed to on 6 February required the production of advice concerning the release of the data on mining tax revenue. Departmental advice to the minister was produced for tabling by the deadline on 7 February, providing yet another contradiction of the often made claim that "advice is never produced".

Several other orders for production of documents were agreed to on 6 and 7 February, details of which will be reported in future issues.

## OTHER DOCUMENTS

Departmental documents tabled by the President on 5 February included *Business of the Senate* for 2012, the *Questions on Notice Summary* and the first Supplement to the 13<sup>th</sup> edition of *Odgers' Australian Senate Practice*. Work of Committees was tabled on 6 February.

## UNANSWERED QUESTIONS

The procedure in standing order 74(5) for drawing attention to unanswered questions on notice, including estimates questions on notice, was used on 6 and 7 February. On the first occasion, the relevant minister had left the chamber and an explanation was not provided, so a motion was moved to note the failure of the minister to provide either an answer or an explanation, several senators contributing to the debate. On the second occasion, an explanation was provided for large numbers of estimates questions remaining unanswered. In moving a motion to note the explanation, the senator concerned observed that she had received the same explanation on behalf of several ministers in that portfolio before numerous rounds of estimates hearings in recent years.

## TEMPORARY ORDERS READOPTED

The temporary orders relating to modified rules for questions without notice, consideration of private senators' bills, and consideration of government business from 12.45 pm on Thursdays were all readopted on 6 February until 30 June 2013.

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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>.

Inquiries: Clerk's Office  
(02) 6277 3364

## ADDITIONAL ESTIMATES

The additional estimates hearings began on 11 February and concluded on 15 February with the usual cross-portfolio hearing on Indigenous matters.

While there were no significant new procedural issues arising, the perennial ones remain. There were many claims that information could not be provided because of confidentiality issues of various kinds, but few were well articulated and almost none were pressed by senators. Late answers to questions on notice continue to be an issue of concern, with agencies producing them at the last minute.

Changes in personnel led to a higher degree of liveliness in some committees than they had been accustomed to but, as usual, a great deal of information was produced to aid the scrutiny of government operations and expenditure. Committees have an expectation that agencies will be represented at the highest level and this is now generally the case. However, an Associate Secretary of the Department of the Prime Minister and Cabinet stated to the Finance and Public Administration Legislation Committee on 11 February that, apart from one case in 2002, it is a longstanding practice going back over seven secretaries that the secretary of that department “does not appear”. The committee could, of course, require the appearance of an officer if it considered it necessary to do so.

Officers from the Department of Finance and Deregulation, the Treasury and the Australian Taxation Office again provided the relevant committees with high level analysis of economic trends and performance, while the Parliamentary Budget Officer was able to outline a program of work that will significantly enhance the quality of financial and economic information and analysis available to members of parliament. The Treasury Secretary noted, however, that a consequence of the PBO’s emergence was a brain drain in areas of Treasury which was struggling to provide information to the PBO in a timely manner (Ec, 14/2).

Following the release of information about the revenue collected from the MRRT (see above, under Orders for production of documents), there were also questions about the operation of the tax, answers to which revealed that lower than expected revenues were a product of the design of the tax, rather than falling commodity prices, a high dollar or State royalties (Ec, 14/2).

Other selected topics covered included:

- the official commencement of the election period for the purposes of the caretaker convention, the broadcasting restrictions and electoral matters (FPA, 11-12/2; EC, 11-12/2);
- changes involving the Federal Magistrates Court and rising court fees generally (LCA, 12/2);
- the case of Mr Ben Zygier and reductions in the overseas aid budget (FADT, 14/2);
- allegations of workplace bullying in CSIRO (Ec, 13/2);
- the handling by the Australian Crime Commission of the launch of its recent report on drugs and sport (LCA, 12/2);

- internal inquiries at Customs and the absence of Customs patrol boats from the Southern Ocean this financial year (LCA, 12/2);
- investments by the Future Fund in tobacco companies (FPA, 12/2);
- probable causes of recent declines in greenhouse gas emissions (the weather rather than the carbon tax) (EC, 11/2);
- progress in the NBN rollout and the cost of coffee machines to that agency (EC, 12/2);
- issues affecting Fair Work Australia, including possible new functions in relation to workplace bullying claims (EEWR, 13/2);
- the take up of the e-health scheme for personal health records and the convening of a high level steering group on anti-microbial resistance in humans (CA, 13/2).

For internal Parliament House users, Parlview now provides a video on demand service for proceedings of the Houses and its committees, providing instant access to estimates footage, among other things.