

DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

rm.pro.prob.17315

No. 243

for the sitting period 15 June — 24 June 2010

25 June 2010

LEGISLATION

The final sittings in the Budget/Winter period saw many bills passed by the Senate, many of them falling into the non-controversial category. At the end of the sitting period, several of these bills were exempted from the application of the cut-off provisions in standing order 111. In a break from standard practice, no time was designated for consideration of non-controversial legislation on either of the Thursdays during the sitting period. The non-controversial bills were considered as part of the normal routine of government business on Thursday 17 June while on 24 June, the normal routine was interrupted from the start of the day's proceedings to deal with a long list of bills, several of which were amended. Most of the amendments were agreed to by the House of Representatives but a small number of bills is expected to return to the Senate in August.

The Paid Parental Leave package was dealt with by the Senate in three days, despite the impression that may have been generated by the former Prime Minister that the Senate was holding up the legislation. The twelve pages of comments on the main bill in the Scrutiny of Bills Alert Digest, tabled on 16 June, indicates that the package may well have benefited from longer scrutiny, but it was agreed to on 17 June after several journeys between the Houses.

The first journey related to the making of requests for amendments to the main bill. When the Senate agrees to both amendments and requests, the bill is not read a third time until the fate of the requests has been determined. As a matter of practice, however, the Senate also advises the House of the amendments it has made at the same time that it asks the House to make the requested amendments. In this case, the House made the requested amendments and informed

the Senate, enabling the bill to be read a third time. Only then did the House deal with the Senate's amendments, agreeing to some and disagreeing to others. The Senate then determined that it would not insist on the amendments to which the House had disagreed, thereby allowing the bills to proceed to Royal Assent. These are standard communications in bicameral legislatures with Westminster origins but they were adapted to accommodate the constitutional innovation of requests for amendments, developed by the Founding Fathers to give effect to their desire that the Senate should enjoy virtually equal powers with the House of Representatives.

Senator Xenophon's absence from the latter part of the debate on the Paid Parental Leave bills, owing to illness, led to a vote on a set of Opposition amendments being taken again by leave after a possible misunderstanding of the senator's email instructions to the party whips. His vote had been paired, but the need to put the Opposition amendments in two groups because some of them were to oppose parts of the bill led to the misunderstanding which, in turn, changed the outcome of the vote. The vote was taken again by leave in accordance with the long-standing principle that the result should reflect the will of the Senate and not be contrived by misadventure.

The only other slightly unusual feature was the compression of the final stages of the Paid Parental Leave Bills to ensure that the bills could be finally dealt with before the conclusion of the sitting on 17 June. This saw the usual Thursday afternoon general business debate being interrupted in order to deal with the message from the House disagreeing with some of the Senate's amendments. Standing order 155 provides that a message from the House shall be reported by the President "as early as convenient" while standing order 132 provides that the Senate may fix a time to deal with a message from the House disagreeing with amendments. The message was considered immediately and the amendments were not insisted on. The matter was resolved without a division. Had any senators required a division, the question would have been postponed to the following sitting day as the message was dealt with at a time when divisions are not permitted under the standing orders (on this issue, see below, under "Disallowance").

When there is a long list of bills to be dealt with at the end of a period of sittings, there is always great pressure to deal expeditiously with them. The Government's inability to secure support for additional sitting time added to the mounting pressure. Procedural options for dealing expeditiously with bills include using the guillotine under standing order 142, using a variation called a "civilised" guillotine where time limits are agreed between the parties and implemented by motion, or using another form of time management motion (a guillotine by another name). All require the support of a majority of senators. The third option was put into effect by leave to deal with the final stages of the package of Renewable Energy Efficiency bills on 23 June when, after the bills had been called on and debated several times during the

week, a time management motion was agreed to providing for all remaining stages to be concluded within an hour. The main bill was agreed to with amendments which were subsequently accepted by the House of Representatives.

A private senator's bill was also dealt with under a time management motion on 22 June following the early presentation of a report from the Legal and Constitutional Affairs Legislation Committee on the contentious Wild Rivers (Environmental Management) Bill 2010. The time management motion also gave precedence to the bill during the time normally spent on consideration of government documents. The bill was passed after a hasty 25 minutes' debate and divisions on the second and third readings.

Even more unedifying proceedings occurred on 24 June when, after the Senate had dealt with a large number of bills, further bills were the subject of precedence motions and called on during the time for general business (and after 4.30 pm) with either very little or no notice. Senators' objections to such hasty deliberations stressed the importance of adhering to procedures which respect the rights of senators by providing for adequate notice, among other things. The risk of mistakes occurring under such conditions is greatly increased and, as is demonstrated by the routine re-taking of miscarried votes or the use of leave to facilitate proceedings, good will is essential to the operations of the Senate.

The Appropriation Bills were amongst the last to be dealt with on 24 June.

One bill which was not dealt with, although it was on the program, was the Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009 which was the subject of a scathing report by the Privileges Committee (see *Bulletin* No. 242). However, the Government has circulated amendments in accordance with the recommendations of the committee to remove the offending provisions.

COMMITTEES

The mechanism for the automatic referral to legislation committees of time-critical bills introduced into the House of Representatives during the estimates fortnight resulted in all committees presenting reports to the Senate on 15 June on bills in relation to which committees had decided unanimously that there were no substantive matters requiring examination.

Many committee reports were presented during the period, including the final report of the Select Committee on the National Broadband Network. The winding up of this committee provided the trigger for the commencement of the new select committee on Reform of the Australian Federation which received an extension of time to report until November 2010.

Legislation committees presented their reports on Budget estimates on 23 June 2010. The Privileges Committee presented two reports on 22 June recommending the incorporation in Hansard of responses by two organisations to remarks made in the Senate. Both organisations had previously made use of the procedures under Privilege Resolution 5 providing for a right of reply. The Joint Standing Committee on Publications presented its report on the electronic publication and distribution of the Parliamentary Papers Series, a development which would greatly enhance access to these very important documents.

Several new inquiries were agreed to, meaning that committees will have no let up during the winter break as we head inexorably towards the next election. The Finance and Public Administration References Committee received a reference on the public service reform proposals, contained in *Ahead of the Game: Blueprint for the Reform of Australian Government Administration*, while exposure drafts of Australian privacy amendment legislation were referred to the legislation committee. The issue of online privacy was referred to the Environment, Communications and the Arts References Committee.

The Privileges Committee received a reference arising from an earlier report of the Foreign Affairs, Defence and Trade References Committee (see *Bulletin* No. 240) on the adequacy of the *Government Guidelines for witnesses appearing before parliamentary committees*. The Guidelines, which have never been endorsed by the Senate, have been shown to be deficient in several respects, noted in recent reports by the Privileges Committee (142nd and 144th reports on "Utegate" and secrecy provisions) and the Foreign Affairs, Defence and Trade References Committee (in relation to its inquiry concerning the HMAS Success).

For other committee reports and new references during the period, see the *Senate Daily Summary*.

ORDINARY ANNUAL SERVICES OF THE GOVERNMENT

The Appropriations and Staffing Committee presented its 50th report on 17 June on the vexed question of the ordinary annual services of the government, the interpretation of which concept has been contested by governments for some years against the long-standing views and practices of the Senate. In the wake of a response from the current Finance Minister rejecting any compromise, the committee recommended that the Senate restate its position in a consolidated resolution, incorporating previous resolutions and changes recommended by the committee and subsequently adopted by the Senate. The resolution was agreed to on 23 June 2010. The report also recommended that the President continue to draw to the attention of the Finance Minister any items of expenditure which appear to be inappropriately included in the appropriation bill for the ordinary annual services of the government (which

the Senate cannot amend). The President tabled his correspondence to the Finance Minister giving effect to this recommendation on 23 June.

MATTERS ARISING FROM ESTIMATES

There were several matters arising from Budget estimates hearings that led to action in the Senate during the fortnight. The Minister for Climate Change, Energy Efficiency and Water (Senator Wong) gave a personal explanation to the Senate on 15 June to explain the apparent discrepancy between answers she provided at estimates and later reports about who had made the decision to postpone the CPRS legislation. The Environment, Communications and the Arts Legislation Committee sought permission to hold an *in camera* hearing during the sitting of the Senate on 15 June to take evidence from the ABC in relation to the salaries of "key presenters" such as Kerry O'Brien (see *Bulletin* No. 242) pursuant to an undertaking given by the ABC.

Among the corrections tabled to Portfolio Budget Statements was a correction for the Australian Film, Television and Radio School, tabled on 16 June, which involved an error in the figures of \$74 million (for an agency with a total annual budget of around \$29 million).

The appearance of the President of Fair Work Australia pursuant to order was reported in *Bulletin* No. 242. The President of the Senate tabled correspondence on 16 June from the Chair of the Education, Employment and Workplace Relations Legislation Committee (Senator Marshall) forwarding a copy of the FWA President's opening statement requesting that the Senate reconsider its order. Also tabled was correspondence from a professional society supporting rescission of the order. Further advice from the Clerk was tabled by Senator Fisher on 17 June and, on 23 June, a motion to relax the requirement for the President to appear failed to gain the necessary support. The original order of 28 October 2009 will therefore continue to apply.

ORDERS FOR PRODUCTION OF DOCUMENTS

Perhaps the most interesting development in relation to orders for production of documents came in response to a statement from the Minister for Health and Ageing, tabled on 16 June in relation to the Senate's order of 11 May relating to therapeutic groups, repeating the misconception that standing order 164(3), in effect, provides for a 30-day extension. The President tabled a copy of his response to the minister the following day in which he explained the meaning of the standing order and rejected the minister's repeated assertions about it (see *Bulletin* Nos 234, 237 and 241). In particular, the President advised the minister that it does not provide an implicit extension of time for a minister to respond to an order of the Senate. A copy of the letter is attached to this *Bulletin*.

Other orders for production of documents were met with standard responses, including:

- the report prepared by the Energy Efficiency Task Force (order of 22 June) was closely connected with the deliberations of Cabinet and its disclosure could therefore disclose those deliberations;
- a PricewaterhouseCoopers study of consumer reaction to container deposit schemes and an ABARE review of the study were drafts that had not yet been considered by the relevant ministers, and, in any case, had been commissioned by an advisory body and were thus not Australian Government documents;
- Australia's response to the G20 Fossil Fuel Subsidy Commitment had been submitted to the G20 and a report was being prepared which it would be inappropriate to pre-empt.

GOVERNMENT ADVERTISING

At the beginning of the sitting period no-one could have foreseen that, by the end of the fortnight, the cancellation of the Government's advertising campaign for its mooted resources super profits tax would be one of the new Prime Minister's first actions. The decision by the Special Minister of State (Senator Ludwig) to exempt the campaign from scrutiny by the Independent Communications Committee and to release a statement confirming the exemption only after estimates for the portfolio had concluded continued to be the subject of examination.

The Finance and Public Administration Legislation Committee reconvened by order of the Senate on 17 June to consider the matter, while Senator Bob Brown introduced a private senator's bill, the Preventing Misuse of Government Advertising Bill 2010, which was referred to the same committee for a short inquiry. The committee reported on the bill on 21 June and Senator Brown made an unsuccessful attempt to bring the bill on for debate by a suspension of standing orders on 22 June. Meanwhile, a general reference on the matter was referred to the Finance and Public Administration References Committee on 16 June and, on 17 June, the Auditor-General gave evidence to the Joint Committee of Public Accounts and Audit on his former role in assessing advertising campaigns and his views of the new (and weaker) arrangements overseen by the Independent Communications Committee. An order for production of the drafts of the Minister's statement and letter to the Treasurer exempting the campaign from the Guidelines was refused on 23 June on the grounds that the drafts were iterative, working documents and that the final versions had been tabled.

Finally, Senator Fielding moved a request to Appropriation Bill (No. 1) 2010–11 to prohibit any funds appropriated by the bill being used to fund the government's advertising campaign on the proposed resources super profits tax. The request was not supported, the new Prime Minister having already announced that the campaign would be cancelled if the mining companies also pulled back from their campaigns.

OPENING OF PARLIAMENT

The Procedure Committee presented a report on 22 June on the proposal to include an Indigenous "Welcome to Country" ceremony before openings of Parliament. Feedback on the options presented in the committee's *First report of 2010* had been divided between support for a resolution endorsing the ceremony and support for the status quo (which, the committee noted, would not preclude such a ceremony occurring). Members of the committee were also divided so the report left it to the Senate to determine. On 23 June, the Leader of the Government in the Senate (Senator Evans) moved a motion in support of a ceremony which was agreed to on the voices, the Opposition indicating that they would not divide on the matter although they preferred the status quo. On the same day, amendments were agreed to House of Representatives standing orders to provide for local Indigenous people to be invited to perform such a ceremony before the opening of Parliament.

DISALLOWANCE

Aviation security regulations disallowed by the Senate on 10 September last year were remade following the 6 month moratorium provided in the Legislative Instruments Act. Senator Xenophon initially gave notice to disallow some parts of the regulations but subsequently gave a notice for disallowance of the regulations in full, withdrawing the earlier notice. When the matter came to a vote on Thursday 24 June after 4.30 pm, the Government called for a division and the question was therefore required to be deferred till the next day of sitting in August (during which time the regulations would continue to operate). Negotiations followed, after which the question was put again, by leave, and carried on the voices, the regulations being thus disallowed.

ROTATION OF SENATORS

A motion moved by the Opposition Shadow Special Minister of State (Senator Ronaldson), and agreed to on 22 June, expressed the Senate's support for a particular method of dividing senators into two classes for the purposes of re-establishing the rotation of senators under section 13 of the Constitution, following a double dissolution. The motion was identical to one moved by the then-Opposition in June 1998 in the context of debate on the deadlocked Native Title Amendment Bill 1997 (the "Wik" legislation). It is the Senate itself which decides the method for dividing the Senate and assigning senators to one of the two classes. A resolution like the ones agreed to in June 1998 and June 2010 could not bind the Senate for the future. Any decision on dividing the Senate would be made after the commencement of

the Parliament following any double dissolution. The motion moved by Senator Ronaldson was thus a precautionary gesture.

For more details, see *Odgers' Australian Senate Practice*, 12th edition, pp. 102–03.

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

Inquiries: Clerk's Office
(02) 6277 3364



PRESIDENT OF THE SENATE



PARLIAMENT HOUSE
CANBERRA

rm.pres.17308

16 June 2010

The Hon Nicola Roxon MP
Minister for Health and Ageing
Parliament House
CANBERRA ACT 2600

Dear Minister

Thank you for your letter of 15 June 2010 in response to the order of the Senate of 11 May 2010 requiring production of information relating to therapeutic groups. In accordance with practice, I have today tabled your letter in the Senate.

In your letter, you repeat a misinterpretation of Senate standing order 164 by referring to a "30 day extension". Standing order 164 does not provide for such extensions and any inference drawn to the effect that it does is incorrect.

An order of the Senate has effect according to its terms. An order for the production of documents that specifies that the documents are to be returned by a specific date means that the documents are due on that date. Paragraph (3) of standing order 164 provides a procedure for any senator to seek an explanation from the relevant minister for non-compliance with the order once 30 days have elapsed after the deadline set by the order. It establishes a right for a senator to seek an explanation, to move a motion without notice and, therefore, to initiate a debate in relation to the matter. It does not limit any other remedy or sanction that a senator may choose to initiate under the procedures of the Senate. Importantly, it is of no application to the person to whom the order is directed. Paragraph (3) of standing order 164 does not provide that sanctions are "not enlivened if a minister complies with an order for production of documents within 30 days after the date specified for compliance" as you have claimed in correspondence in relation to other orders.

I trust that this clarifies the interpretation of the Senate's standing orders for you. I propose to table my response for the information of senators.

Yours sincerely

(John Hogg)