



DEPARTMENT OF THE SENATE

PROCEDURAL INFORMATION BULLETIN

No. 273

17 May 2013

For the sitting period 14 – 16 May 2013

CASUAL VACANCY

The resignation of Senator Evans on 12 April was reported to the Senate on 14 May. In a joint sitting on 15 May the Western Australian Houses chose his replacement. It is expected that Senator Sue Lines will be sworn in when the Senate meets again on 17 June. It is now commonplace for senators to be appointed to committees as soon as they are available to serve on them.

NATIONAL APOLOGY FOR FORCED ADOPTIONS

Proceedings on the motion of apology (see [Bulletin No. 272](#)) were concluded on 14 May.

BUDGET ESTIMATES HEARINGS

With Budget estimates hearings about to commence, Opposition senators used the procedure under standing order [74\(5\)](#) to ask the responsible ministers for explanations for hundreds of answers to questions taken on notice at the 2012-13 supplementary Budget and additional estimates hearings remaining unanswered. The ministers in their explanations referred to the increasing number of questions being placed on notice.

Dates for the budget estimates hearings were set at the same time as the days of meeting for 2013. The particulars of proposed expenditure were tabled on 14 May after the Budget documents, and referred to legislation committees. Portfolio Budget Statements for parliamentary and executive departments were tabled at the same time. After recent changes to the ministry, the order allocating departments to committees was amended on 15 May to take account of the new portfolios.

ORDERS FOR PRODUCTION OF DOCUMENTS

An order for production of a report of a review of Commonwealth fisheries management legislation (see [Bulletin No. 272](#)), was complied with by the presentation of a document out of sitting. The document was tabled on 14 May.

Numerous returns to continuing orders for the production of data on departmental vacancies, appointments and grants before each round of estimates, were presented.

PRIVILEGES COMMITTEE REPORT

The Privileges Committee presented a [report](#) on 14 May on an allegation of contempt relating to the possible unauthorised disclosure of the draft report of the [Select Committee on Electricity Prices](#). This was the first such allegation referred to the committee since the

committee's 122nd report recommended the adoption of new procedures. The procedures, which required committees to investigate their own unauthorised disclosures and raise as matters of privilege only the most serious cases, had had the effect of stemming the number of matters raised that were not capable of satisfactory resolution. In this particular case, the select committee was unable to undertake the necessary investigation and analysis before it ceased to exist on presentation of its final report. The Privileges Committee effectively completed those preliminary inquiries and concluded that the case would not have warranted further investigation under the new procedures. It identified the option of select committees affected by unauthorised disclosures in future, seeking a short extension to deal with the matter, but stopped short of recommending that the procedures be amended to this effect, preferring a case by case approach.

REGULATIONS AND ORDINANCES COMMITTEE

The Senate's oldest non-domestic standing committee demonstrated its continuing ability to adapt by commencing a practice of regularly tabling its Delegated Legislation monitors which give an account of the concerns raised by the committee with ministers. In the absence of disallowance notices accompanied by statements from the committee and tabling of relevant correspondence (which are now less frequent than in earlier times), the presentation of the Monitor keeps the Senate informed of the committee's work in a timely manner, supplemented by periodic tabling of volumes of correspondence.

LEGISLATION

More than twenty bills were passed during the week, most of them on 16 May before Question Time. These included a package of thirteen bills relating to the funding for Disability Care, the agency charged with implementing the National Disability Insurance Scheme. Much of the funding is to come from taxation measures, including a rise in the Medicare levy. The Senate treats a bill increasing a taxation as a bill imposing taxation for the purposes of section 53 of the Constitution. Such a bill may not originate in the Senate and any amendments to it must take the form of requests for amendments. A further constitutional requirement is that a bill imposing taxation must deal with only one subject of taxation. Because the Disability Care funding is to come from numerous sources, separate bills were required for the eleven subjects of taxation concerned, accounting for the large number of bills in the package. The bills were considered during the time for non-controversial legislation on 16 May and passed without amendments or requests for amendments.

Bills attracting controversy included the Referendum (Machinery Provisions) Amendment Bill 2013 and the Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012, passed on 15 and 16 May respectively. The first bill was debated at length, Opposition attempts to amend it being unsuccessful. The bill will allow the Australian Electoral Commission to send the 'Yes' and 'No' case on the foreshadowed referendum on local government funding by means other than post. The debate was of interest in revealing the origins of the official (Government-funded) 'Yes' and 'No' cases in

the frustration experienced by Prime Minister Andrew Fisher after failed referenda owing, in his view, to insufficient information being available to electors.

A suspension of standing orders was required to enable the Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012 to be brought on during the time for consideration of private senators' bills on 16 May, against opposition by the Australian Greens. The bill was passed with Government amendments which the parliamentary secretary with carriage of the bill attributed to recommendations made by the Legal and Constitutional Affairs Legislation Committee in its very careful consideration of the bill.

The contribution of Senate committees to the legislative process was also acknowledged in an unusual way in the form of an Opposition second reading amendment moved to the Aged Care (Living Longer Living Better) Bill 2013 in the House of Representatives, to postpone further consideration of the bill until the Senate Community Affairs Legislation Committee's report on the bill is presented. While purists might lament the degradation of bicameralism represented by an attempt in one House to express reliance on the work of committees of the other, others would recognise the well-earned tribute to the high quality scrutiny applied to bills by Senate committees. That this is not an isolated incident was confirmed by a motion in the House on 16 May validating the passage of the Australia Council Bill 2013 and an associated bill before receipt of a report from the relevant committee of the House. This was justified on the basis that amendments to the bill addressed matters raised by the Senate committee in its report, which had been referenced by the House Committee.

The Financial Framework Amendment Bill (No. 2) 2013, passed during the time for consideration of non-controversial legislation on 16 May, included a further response to the decision of the High Court in *Williams v Commonwealth* [2012] HCA 23 (the "school chaplains case"), by authorising the Commonwealth to form and participate in the formation of companies. Although this had been considered to be authorised under the executive power of the Commonwealth, out of an abundance of caution, the bill puts beyond any doubt the capacity of the executive government to participate in the formation of companies. It also validates the Commonwealth's participation in all pre-existing companies. The Scrutiny of Bills Committee queried whether there was sufficient parliamentary oversight of the pursuit of objectives through the formation of companies, and also queried the use of regulations to authorise participation (as it had queried the use of regulations to validate and authorise expenditure in the initial response to the Williams case). (See also [Bulletin No. 264](#).)

BILLS TO ALTER THE CONSTITUTION

A amendment of the Referendum (Machinery Provisions) Act in relation to the distribution of the 'Yes and 'No' cases was one preparation for the foreshadowed referendum bill. The Constitution requires bills to alter the Constitution to be passed by an absolute majority in each House. Senate standing order [110](#) provides for a roll call to take place immediately before the third reading of a bill to alter the Constitution. A roll call requires 21 days' notice, a requirement that reflects the arduousness of long distance travel in earlier times. The purpose of the roll call was to verify that the requisite number

of senators was present, but it is served equally by a recorded vote on the third reading, whether or not a division is called for. A recorded vote also provides evidence of those senators voting ‘aye’, or ‘no’ for the purposes of preparing the ‘Yes’ and ‘No’ cases under the electoral legislation. For many decades it has been the Senate’s practice to suspend the requirement for a roll call before the third reading vote because the presence of an absolute majority is so readily ascertained by other means. A motion to suspend SO 110 was agreed to on 16 May.

BUDGETS FOR PARLIAMENTARY DEPARTMENTS

Reports by the Joint Committee of Public Accounts and Audit and the Senate Appropriations and Staffing Committee on the estimates for the Parliamentary Budget Office and the Department of the Senate, respectively, were presented on 15 and 16 May. A report by the equivalent committee of the House of Representatives in respect of the budget of the Department of the House of Representatives was also presented. Three of the four parliamentary departments therefore have their budget estimates examined and determined by all-party parliamentary committees. While the executive government still ultimately controls the purse strings, these mechanisms are an important bulwark against executive domination and their growth in number is a significant development.

As well as determining the estimates for the Department of the Senate for inclusion in the Appropriation (Parliamentary Departments) Bill 2013-2014, the [Appropriations and Staffing Committee](#) also recommended the Senate’s approval of the transfer of ICT staff and funding to the Department of Parliamentary Services, in accordance with a 1987 resolution requiring Senate approval of any changes to the structure or responsibilities of the parliamentary departments. The recommendation was adopted on 16 May. Finally, the report included observations on the process for negotiating the department’s budget with the executive.

DISALLOWANCE

A motion to disallow the Building Code 2013, made under the *Fair Work (Building Industry) Act 2012*, was unsuccessful on 15 May.

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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