



DEPARTMENT OF THE SENATE

PROCEDURAL INFORMATION BULLETIN

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For the sitting period 12–14 November 2013
and Supplementary Budget Estimates 18–22 November 2013

OPENING OF PARLIAMENT

The 44th Parliament was officially opened on 12 November 2013 by the Chief Justice of the High Court of Australia, the Honourable Robert French AC, appointed as the Deputy of the Governor-General under section 126 of the Constitution to perform this task. The Governor-General, Her Excellency the Honourable Ms Quentin Bryce AC CVO, attended the Parliament in the afternoon to deliver the usual speech outlining the newly-elected government's legislative program for the session.

The opening followed the traditional proceedings, including an Indigenous welcome to country ceremony, but the role of the defence forces at the front of the building on opening day appears to have been increasing gradually over the years although there is no connection with the operations of the legislature. A casual visitor to the building, on observing these manoeuvres, might well be left with the impression that Australia's peak democratic institution depends on protection by the defence forces when, in reality, it is the Constitution and the electors of Australia who uphold our democracy.

CASUAL VACANCIES

Since the Senate met in June, there have been four casual vacancies, two of which were filled before 12 November, with the chosen senators being sworn in on that day. The vacancies arose from three senators resigning to contest seats in the House of Representatives (successfully) and one Senator who resigned after the election. One of the vacancies remains unfilled, with the matter adjourned by the Queensland Parliament pending the outcome of an inquiry by that State's anti-corruption body.

Interesting questions arose in relation to the vacancies caused by the resignation of Senator Bob Carr after the election. Because he had been elected to a new term commencing on 1 July 2014 he was, in effect, required to lodge a double resignation, from his current term and from his term commencing in 2014. While this has not happened before, the situation is contemplated in *Odgers' Australian Senate Practice* in the case of a senator either choosing to resign or becoming subject to a disqualification. There is also the case of a senator-elect who died in the 1930s before the commencement of his term. In that case, a casual vacancy arose.

In the present case, the President advised the Governor of New South Wales of the double vacancy. Following the receipt of advice from the Crown Solicitor, the New South Wales Parliament opted to fill only one of the vacancies. The implications for Senator O'Neill of possibly ceasing to be a senator on 30 June 2014 before being reappointed to the second vacancy were canvassed in evidence before the Finance and Public Administration Legislation Committee at its supplementary budget estimates hearing on 18 November.

In announcing the vacancies on 12 November, the President tabled the relevant correspondence together with a copy of the writ for the election of senators for New South Wales for a term beginning on 1 July 2014.

PARLIAMENTARY REFORM REVISITED

In the last Parliament, the advent of minority government in the House of Representatives led to a number of parliamentary reforms for that House, some of which were based on long-standing Senate procedures (see [Bulletin No. 244](#)). While many of those reforms have not survived into the new Parliament, the situation in the Senate is different because the lack of a majority for any party is the norm. Consequently, several measures tried in the last Parliament have been reinstated as temporary orders for the current Parliament. These include the modified rules and time limits for question time, and the availability of additional time for consideration of orders of the day relating to private senators bills. Modifications were also made to the so-called three-day rule in standing order [26](#) to take into account the fact that there would not be three working days before the commencement of hearings of the first group of legislation committees considering supplementary budget estimates. The temporary order adjusting time limits on speeches during the open-ended adjournment debate on Tuesdays was also reinstated.

LEGISLATION

Following a Parliament in which there were virtually no disagreements between the Houses on legislation, the first bill passed by the Senate in the current Parliament is the subject of disagreement over the Senate's amendments to the bill. The Commonwealth Inscribed Stock Amendment Bill 2013 was amended by the Senate on 14 November to reduce the debt ceiling from an amount of \$500 billion to an amount of \$400 billion on the grounds that sufficient information had not been provided to the Parliament to justify the proposed increase in the debt ceiling. By the end of the day the House of Representatives had disagreed with the Senate's amendment and the Senate will consider the matter further when it next meets.

Several private senators bills were introduced (or restored to the *Notice Paper*) along with two Government bills.

DISALLOWANCE

A notice of motion to disallow the regulations giving effect to the Government's policy on Temporary Protection Visas was given on 12 November but has not yet been resolved.

ORDERS FOR PRODUCTION OF DOCUMENTS

Numerous responses were provided to continuing orders for production of documents before the Senate met on 12 November. These included the annual return on unproclaimed legislation under standing order [139\(2\)](#) which has been the subject of numerous comments in these pages, as well as the regular details on agency files, contracts,

appointments and vacancies, and grants.

Senators also initiated orders for production of documents in relation to areas of controversy including the Government's injection of funds to the Reserve Bank of Australia's Reserve Fund, the Government's response to the Intergovernmental Panel on Climate Change's 5th assessment report and certain negotiating instructions, and details of information about "on water operations" in the context of the Government's border protection activities.

In relation to the Reserve Bank, the Assistant Treasurer declined to produce the documents on the grounds that they were directly related to a Cabinet decision and in recognition of the public interest in maintaining the confidentiality of the deliberative processes of Cabinet.

In relation to border protection information, the Minister for Immigration and Border Protection provided a response to the Chair of the Legal and Constitutional Affairs Legislation Committee, rather than to the Senate, providing copies of press releases and transcripts of media conferences and offering a confidential briefing to senators by the operation commander. A claim for other documents not to be provided in the public interest was advanced, citing possible damage to national security, defence, or international relations, and possible prejudice to law enforcement or protection of public safety as the grounds for the claim. Reasonably detailed reasons for making these claims were also provided. These matters were the subject of detailed questioning at the supplementary budget estimates hearings where some information was provided but there was a general reluctance by witnesses to give the details sought.

COMMITTEES

Following changes to the Administrative Arrangements Order, consequential changes were made to the Senate order allocating portfolios to committees. Members were appointed to committees and committees began to receive references, including via the Selection of Bills Committee. The Environment and Communications Legislation Committee received a reference on the performance of Australia Post, while the Finance and Public Administration References Committee received a reference on Commonwealth procurement procedures, including the ratio of Australian goods and services purchased, compared with imported goods and services. Competing references on the proposed repeal of the carbon tax and measures to address carbon pollution and greenhouse gas emissions were defeated but the legislation itself was referred to the Environment and Communications Legislation Committee for inquiry and report by the date of the Senate's next meeting on 2 December.

A new select committee on the National Broadband Network was appointed on 14 November. There were some indications that a proposed joint select committee on this subject would not now go ahead.

Committees also obtained the Senate's approval to continue with inquiries into matters referred in the previous Parliament and not disposed of.

A long standing order requiring the President of Fair Work Australia (now the Fair Work

Commission) to appear at each round of estimates hearings was replaced by a resolution expressing the Senate's expectation that the President would appear should his or her presence be required by the committee.

Senate committees continued to hold meetings and present reports during the prorogation period. Committees presented 32 reports between 28 June and 11 November and while many were interim or procedural in nature, indicating committees' intentions to take up inquiries again in the new Parliament, there were also many substantive reports presented. For a full listing of these see the *Journals of the Senate* of 12 November 2013.

SUPPLEMENTARY BUDGET ESTIMATES HEARINGS

The first estimates hearings to be held after the change of government were the supplementary budget estimates hearings commencing on 18 November. The usual cross portfolio hearings on indigenous issues were again held at the end of the process but, because of the relocation of responsibility for indigenous matters in the Prime Minister's portfolio, were conducted by the Finance and Public Administration Legislation Committee rather than the Community Affairs Legislation Committee, as in the past.

In one committee, a parliamentary secretary appeared briefly in the place of a Senate minister, contrary to the order of the Senate in relation to the powers of parliamentary secretaries.

Despite the switching of roles of senators, there was little discernible difference in the conduct of the hearings or the willingness of officers to provide answers on controversial matters. The usual erroneous claim that "advice is never provided" was again heard on numerous occasions and properly formulated claims of public interest immunity, in accordance with the order of the Senate of 13 May 2009, were few and far between. In one committee, following a question from a senator about advice provided by an agency to the formulation of a government response to a report by the committee, the Chair advised the senator that there was no procedural reason that the advice could not be provided. The witness informed the committee that he would seek legal advice on the Chair's view, surely an unnecessarily combative response in relation to a matter that does not involve a question of law but the proper application of the 2009 order which witnesses should now be well aware of. The foreshadowed inclusion of reference to this and other Senate orders in the revised version of the Government's guidelines for official witnesses appearing before parliamentary committees cannot come quickly enough.

As usual, however, much information of great public interest was provided across the eight legislation committees.

Some of the matters covered include the following:

- the Government's border protection operations
- the proposed raising of the debt ceiling
- the change from a "softball" to a "hardball" approach in relation to the release under Freedom of Information legislation of incoming government briefs

- the processes relating to the dismissal of departmental secretaries and the appointment of ministerial staff
- the roll-out of the National Broadband Network
- the missing ballot papers from the Senate election in Western Australia
- the security of the parliamentary computing network
- cuts to the Family Court and the Federal Circuit Court
- the new and as yet unoccupied ASIO building
- the resignation of Barrie Cassidy from the Old Parliament House Advisory Council
- the shelving of plans to shed 12,000 public sector jobs
- the broadcasting by the ABC of revelations concerning mobile phone data interceptions
- the cost of machinery of government changes
- the future chairmanship of the Future Fund
- the sale of Medibank Private
- the surveillance by law enforcement agencies of the communications records of several members of Parliament
- investigations by ASIC into Leighton Holdings
- increased costs of the National Disability Insurance Scheme
- the Productivity Commission's inquiry into the car industry
- potential job losses at the Australian Taxation Office and the management of potentially excess staff in other agencies
- progress in construction of GP super-clinics, a policy initiative of the previous government
- plans to re-establish the Australian Building and Construction Commission
- the withdrawal of offers in relation to the former AusAID's graduate recruitment program
- take-up of the personally controlled e-health records scheme.

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/Powers_practice_n_procedures.

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