



DEPARTMENT OF THE SENATE

PROCEDURAL INFORMATION BULLETIN

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For the sitting period 13–15 May 2014

LEGISLATION

In a short sitting week, there was relatively little legislative activity in the Senate. The Fair Work (Registered Organisations) Amendment Bill 2013 was negated at second reading on 14 May, adding to a growing list of bills that have been defeated once by the Senate.

A large number of budget related bills was introduced in the House of Representatives but all could be described as orthodox in that they raised no difficult constitutional issues. Before the Budget there had been much speculation that unpopular measures to raise taxes or reintroduce indexation on fuel excise could somehow be combined with appropriations thus making opposition to them problematic and liable to accusations of “blocking Supply”. In previous years, amendments to the Commonwealth’s borrowing limits had been included with Appropriation Bill No. 2, raising the prospect that more adventurous measures might be tried. However, the speculation proved groundless.

ELECTORAL MATTERS

Since the last issue, the Western Australian half Senate election has been held again after the Court of Disputed Returns declared the first election void. With the return of the writ for Western Australia, the final composition of the Senate after 1 July 2014 has now been settled. As a result, the Senate will have the largest crossbench in its history with 17 senators representing minor or micro-parties and one independent. The Auditor-General presented a [report](#) on the Australian Electoral Commission’s storage and transport of completed ballot papers at the September 2013 Federal General Election. The Auditor-General was critical of the AEC for not implementing recommendations from an earlier performance audit.

The Joint Standing Committee on Electoral Matters presented an [interim report](#) on its inquiry into the 2013 election, recommending that electoral laws be amended to provide that Senate elections proceed on a system of optional preferential voting, including options for both above and below the line voting.

ORDERS FOR PRODUCTION OF DOCUMENTS

The government’s poor record on responding to orders for production of documents improved somewhat during the period with further responses being provided to orders agreed to in March (see Bulletin No. [280](#)).

An order for documents relating to the independent review of Maules Creek Coal Mine offsets, the response to which was previously delayed pending a full legal assessment of the documents, was complied with in full by the promised date of 15 April.

An order for documents relating to dredging at Abbot Point in Queensland was met with by the release of approximately 2,500 pages previously released under Freedom of Information legislation and a request for more time to consider potential prejudice in relation to three specified proceedings, one before the Federal Court, one before the Federal Circuit Court and one before the Administrative Appeals Tribunal. The Minister's letter claimed that the "sub judge immunity [sic] may cover some of these documents while the above proceedings [remain] afoot". The sub judge convention is not an immunity but a self-imposed restriction on debate where there is a real danger of legal proceedings being prejudiced in the sense that proceedings are at risk of being determined on grounds other than the evidence before the court, or that the evidence itself risks being tainted by the public debate. The risk is considered greater where the proceedings involve a jury or magistrate, both regarded as less inured to outside influence than judges. On these grounds the application of the convention to the specified proceedings is rather tenuous.

Leading the way in providing better articulated public interest immunity claims to the Senate and considered responses to orders for production of documents is the Finance Minister, Senator Cormann, who also represents several portfolios in the Senate including Environment. In Opposition, it will be remembered that Senator Cormann applied firm pressure on governments to be accountable, including by initiating an order setting out the proper process for declining to provide information to the Senate.

New orders were agreed to in relation to livestock shipping services (14 May) and homelessness (15 May). Responses will be covered in the next Bulletin.

COMMITTEES

The particulars of proposed expenditure (another name for the provisions of the Appropriation Bills) were referred to legislation committees after the presentation of the Budget documents, and portfolio budget statements were also tabled (13 May) in preparation for estimates hearings.

The Select Committee on the National Broadband Network was extended till the end of the current Parliament but there was no elaboration of its work plan or reporting obligations in the meantime.

The usual motion for reference of time-critical bills during the estimates period was agreed to on 15 May. This mechanism ensures adequate scrutiny of bills which substantively come into effect on or before 1 July 2014 but also allows committees to resolve unanimously that there are no issues requiring examination.

Apart from a Selection of Bills Committee [report](#) being adopted, there were no other new committee references this week.

Numerous committee reports were presented during the period.

The Finance and Public Administration References Committee presented a [report](#) on 14 May on its latest review of the Senate contracts order, an ongoing order for production of documents that provides senators and others with valuable information about

significant government expenditure and whether confidentiality provisions attach to the contract. The committee made several recommendations for adjusting the process in the future, including in relation to oversight by the Auditor-General who has played an important role in providing the Senate with quality assurance and encouraging improvements by government agencies in contracting and compliance practices. The Auditor-General was able to assure the committee that significant improvements in performance and compliance had occurred since the order was first implemented.

The long-awaited [report](#) by the Rural and Regional Affairs and Transport References Committee on import risk analyses for pineapples, ginger and potatoes was presented out of sitting, continuing the vigilance of that committee in protecting Australia's agricultural interests. The Select Committee on the Abbott Government's Commission of Audit presented another [interim report](#) and received a short extension to conclude its work now that the Commission of Audit report has been made public and the Budget presented.

The [dissenting report](#) by Government Senators on the Education and Employment References Committee on technical and further education in Australia contained an assessment of the value of Senate committee inquiries before going on to criticise the terms of reference, timeframe and conduct of this particular inquiry, and the lack of regard to the impact of hastily-conceived inquiries on scarce committee resources. It is the case in the current Parliament that virtually all references to Senate committees have been agreed to without debate and therefore without the opportunity to polish the terms of reference, if required, and raise issues of committee capacity to discharge the reference adequately.

The [report](#) of the Finance and Public Administration Legislation Committee on the provisions of the Omnibus Repeal Day (Autumn 2014) Bill 2014 noted the repeal of Appropriation (Parliamentary Departments) Acts which had unspent appropriations against them and that this method of clawing back unspent appropriations by-passed "established processes for negotiation between the President of the Senate, on behalf of the Appropriations and Staffing Committee, and the Minister for Finance" referred to in several resolutions of the Senate. The committee was supportive of the suggestion that there should be clear guidelines about the content of such bills to aid parliamentary scrutiny.

The Foreign Affairs, Defence and Trade Legislation Committee continued its [scrutiny](#) of the implementation of the *Defence Trade Controls Act 2012*, noting at the half-way point that there were signs of improved consultation between the various parties on this initially troubled policy (see Bulletin [No. 268](#)) as a direct result of the strengthened consultative mechanism established by Senate amendments to the original bill.

The Regulations and Ordinances Committee, on a request from the Appropriations and Staffing Committee, began drawing the Senate's attention, in its [Delegated Legislation Monitors](#), to regulations authorising expenditure that would not appear to meet the test for categorisation as ordinary annual services of the government. The regulations are made under legislation hastily cobbled together in response to the High Court's decision in the *Williams* (School Chaplains) case (see Bulletin [No. 264](#)). This legislation is the subject of a current challenge in the *Williams* (No. 2) case, so called.

The Privileges Committee presented its [156th report](#), in relation to a right of reply matter. For details of other committee reports, see the [Senate Daily Summary](#).

ADDRESS IN REPLY

The Address in Reply was agreed to on 15 May, along with arrangements for it to be presented to the Governor-General on 16 June.

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](http://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures).

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