



DEPARTMENT OF THE SENATE

PROCEDURAL INFORMATION BULLETIN

No. 286

3 October 2014

For the Sitting Period 22 September — 2 October 2014

LEGISLATION

The major item of legislation dealt with during the fortnight was the National Security Legislation Amendment Bill (No. 1) 2014 which had been the subject of a report by the Parliamentary Joint Committee on Intelligence and Security presented out of sitting on 17 September. In the same week that ministerial statements on defence and national security took a prominent place, debate began on the second reading of the bill.

Senators made much of the comments on the bill by the Scrutiny of Bills Committee in its Alert Digest and called on the minister to table his response to the committee ahead of the committee's report being presented later that day. The minister deferred to the committee in declining to table his response, a position that raised interesting questions. Given the role of the Scrutiny of Bills Committee in scrutinising bills for the benefit of the Senate and the importance of the minister's response in providing information to the Senate, it is unlikely that the early tabling of the minister's response would have been seen as anything other than helpful, even if it was presented without the committee's assessment of the response. Another option, had the committee's report been available, would have been for the report to have been presented earlier in the day to inform the debate on the bill. Yet another option would have been for the bill not to have been programmed for debate until the committee's report had been presented. Where a bill is referred to a legislation committee, standing order 115(3) ensures that a bill is not called on before the day set for the legislation committee to report. Because the Scrutiny of Bills Committee has a continuing obligation to report, and its ability to do so on a particular bill depends on the timing of the minister's response, such a rule would not be practicable but, in this case, the nature of the issues scrutinised by the committee and their importance to the bill highlighted the utility of the report being available before debate on the bill resumed.

The committee stages of the bill had some unusual features. It is common at the commencement of a committee of the whole stage, when the question before the chair is, "That the bill stand as printed", for senators to ask general questions of the minister about aspects of the bill before any amendments are moved and the debate becomes more specific. On 24 September, some frustration on the part of government senators with the time being spent on general debate led to a government senator seeking - and being granted - leave to move two amendments circulated by the Australian Greens. On the rare occasions that something similar has occurred in the past, it has been clear that a senator moving amendments was doing so at the clear request, and on behalf of, the senator in whose name the amendments had been circulated. Although this was not the case on this occasion, the granting of leave meant that no senator present objected to the proposed course of action.

It was a different story when the government senator, having listened to the minister's

arguments against the amendments, sought leave to withdraw them. Leave was denied and debate continued on the amendments. When debate resumed on the amendments the following day, the minister moved closure on the question, a motion won by only one vote. The amendments were then negatived and the committee proceeded to deal with numerous amendments moved by senators representing most views around the chamber. The Senate agreed to extend its hours of meeting on 25 September to provide further time for consideration of the bill which passed later that day with Government and Palmer United Party amendments.

Controversial measures to amend the *Racial Discrimination Act 1975* which had been abandoned by the Government following community concern were introduced as a private senator's bill on 25 September, sponsored by two cross-bench senators and two government senators. The bill was debated under the temporary order relating to consideration of private senators' bills on 2 October but debate was adjourned.

COMMITTEES

Controversy also attended the establishment of a select committee to examine aspects of Queensland government administration. Proposed by the Leader of the Palmer United Party, the motion had previously been denied formality (see Bulletin No. 285) but a new version of it had been placed on the Notice Paper. On 23 September, formality was again denied for the motion and Senator Lazarus moved to suspend standing orders to enable the motion to be called on and determined without debate, an unusually draconian proposition. The suspension was agreed to and Senator Lazarus then moved a machinery motion to, among other things, prevent debate on the substantive motion, a motion to which the Leader of the Government moved an amendment to allow debate in the usual manner. In the midst of these intense proceedings, business was interrupted to allow another Palmer United Party senator to make his first speech, before hostilities resumed and Senator Lambie moved closure on the amendment. The motion was lost on an equally divided vote and debate continued, but a pairing error was discovered in the meantime and the vote was taken again, in accordance with the conventions of the Senate, and closure was agreed to on the voices. The amendment was then lost and the machinery motion agreed to as moved. By this time, the Government had circulated an amendment to the substantive motion to extend the select committee's scrutiny of Queensland government affairs to the previous ALP government as well as the present LNP government. As the machinery motion did not rule out amendment of the substantive motion, only debate, the amendment was moved and agreed to and the substantive motion was lost on the voices when it failed to attract any support in its amended form.

The final attempt to establish the select committee occurred on 30 September. Denied leave to move a slightly different form of the motion, the terms of which had been circulated in the chamber, Senator Lazarus moved successful motions to suspend standing orders and give precedence to a motion to establish the committee. The Government again moved an amendment to extend the purview of the committee but it was unsuccessful on this occasion and the substantive motion succeeded with Opposition and Australian Greens support. Many points of order were taken on the same question rule in standing

order 86 but the President pointed out that, even if the latest motion to establish the committee was indeed the same question as had been negatived the previous week, there could be no point of order because the Senate had agreed to suspend those standing orders which would otherwise have prevented the motion being moved and determined.

In addition to the new select committee (which will no doubt be the subject of future commentary in this publication), the House of Representatives agreed to the appointment of two new joint select committees previously initiated in the Senate (see Bulletin No. [285](#)).

DISALLOWANCE

Disallowance notices previously given, and amended, by Senator Leyonhjelm in relation to certain agricultural research and development levies (see Bulletin No. [285](#)) were withdrawn on 24 September.

Three disallowance notices reached the 15th - and latest allowable - day for resolution during the sitting period. One, given by the Regulations and Ordinances Committee in relation to the Farm Household Support Secretary's Rule 2014, was withdrawn on the last day (1 October) following satisfactory resolution of the committee's concerns.

For the avoidance of misadventure that would have resulted in the instrument being deemed to have been disallowed (because the matter was not resolved by the end of the 15th day), the disallowance motion for the Fair Work Amendment (Protected Industrial Action) Regulation was called on under a special order on 24 September that provided for the question to be put by a certain time. The regulation was not disallowed.

The same mechanism was used on 1 October to bring the motion in relation to disallowance of certain items of the Corporations Amendment (Streamlining Future of Financial Advice) Regulations to a vote, which was also lost.

DEPLOYMENT OF AUSTRALIAN TROOPS TO IRAQ

A motion to suspend standing orders to enable debate on a motion relating to the deployment of Australian troops to Iraq failed when it attracted no support other than from Australian Greens senators.

NEW PROCEDURES

The Procedure Committee followed up its *Second report of 2014* (see Bulletin No. [284](#)) with its *Third report of 2014*, presented out of sitting on 9 September 2014. The chair of the committee, Senator Marshall, gave notices of motion on 22 September to adopt the committee's recommendations, two out of three of which were subsequently agreed to on 24 September.

The major recommendation was for the adoption on a trial basis of several procedures to streamline business with the aims of making it easier for senators to follow and enhancing of participation rights. Under the new procedures, most documents will be tabled at the beginning of the day on Monday, Tuesday and Wednesday with up to 30 minutes

available after the MPI each day for their consideration, an increase in the opportunities to debate broader categories of documents as of right. The presentation of committee reports and government responses is also to be consolidated, with enhanced opportunities for debate as of right. It is envisaged that these increased opportunities for debate will reduce confusion, and will be funded by a reduction in the incidence of ad hoc debates by leave. Routine extensions of time for committees to report and authorisations for committees to meet while the Senate is sitting will now be dealt with in a similar manner to the postponement of business, with senators having a right to have the question put on any of the announced proposals. If the proposals are unchallenged, they will be deemed to have been approved. Changed procedures for the adjournment debate and Matters of Public Interest discussion (renamed Senators' Statements) will also expand speaking opportunities. These changes came into effect on 30 September.

A second recommendation in relation to seats on the floor of the Senate for a gallery for members of the House of Representatives was adopted, giving the President greater freedom to determine the placement of the gallery and to clearly delineate them from seats for cross-bench advisers which have increased in number in proportion to the increase in the size of the cross-bench.

A third recommendation was for the rules on photography in the chamber to be standardised across the two Houses, removing the prohibition of photographs in the chamber other than of the senator with the call. The motion to adopt this recommendation was postponed when it appeared that the measure was not as widely supported as was previously thought.

ORDERS FOR THE PRODUCTION OF DOCUMENTS

The first returns to the order of continuing effect agreed to on 25 June (see Bulletin No. [283](#)) for Senate ministers to table statements of the number of questions taken on notice at estimates hearings that remained unanswered by the committees' deadlines were presented during the fortnight. These statements are due not later than 10 days before the commencement of each round of estimates hearings.

An order for production of documents relating to the Victorian East West Link project was met with a nil return on the grounds that the project remained in a commercially sensitive period with contractual and legal issues still to be finalised. In addition, the requested assessments of the project had not yet been completed.

An order for production of documents relating to the Toowoomba Bypass project in Queensland was agreed to on 30 September, for return by the following day. In response, the minister representing the responsible minister tabled several relevant documents but in relation to detailed financial or commercial information about the project, made an implied public interest immunity claim on grounds of potential prejudice to the final outcomes of the project which was at a sensitive commercial stage.

Documents were also sought on incidents of alleged sexual abuse and misconduct by staff at the Nauru detention centre (1 October) as was legal advice referred to in a Regulations and Ordinances Committee publication on whether regulations were made in accordance

with a specific regulation-making power in an Act. The response to the former referred to the information sought by the Senate possibly having been “compromised”. The response then referred to the timeframe given for compliance and the inappropriateness of providing the information in the circumstances. There was no claim of public interest immunity.

An order for production of the latest discussion paper on data retention (See Bulletin No. 285 on “metadata”) falls due on 20 October 2014.

COMMITTEE REPORTS

As well as numerous reports on legislation, from legislation and legislative scrutiny committees, Senate committees presented significant reports during the period including on the performance of Australia Post, particularly in relation to licensed post offices, and on the Korea-Australia Free Trade Agreement. The Appropriations and Staffing Committee also presented its *Annual Report for 2013-14*. The Privileges Committee’s [158th report](#) recommended the incorporation in Hansard of a response to remarks made by Senator Lambie in the adjournment debate on 23 September, demonstrating once more the efficacy of this simple and speedy remedy.

ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

On the last sitting day before the supplementary budget estimates hearings, Senator Ludwig used the procedure under standing order 74(5) to seek explanations from numerous ministers for unanswered estimates questions on notice from six different portfolios. In the worst case (Treasury), hundreds of answers were outstanding and in the absence of an explanation, Senator Ludwig moved that the answers be laid on the table by 5pm the same day. The responsible minister tabled a response, noting the short timeframe for compliance, but undertaking to answer outstanding questions as expeditiously as possible, before the next round of estimates. The minister also noted the record number of questions on notice for the portfolio from the Budget estimates hearings.

DEATH OF FORMER CLERK

As its first item of business on 22 September, the Senate paid tribute to former Clerk of the Senate from 1988 to 2009, Harry Evans, whose death earlier in the month came as a shock to many. Harry’s excellence as an adviser was much invoked during debates on motions to establish a select committee on aspects of government in Queensland when his earlier advice on comity between Houses was relied on by those opposing the motions.

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).

Inquiries: Clerk's Office
(02) 6277 3364