



DEPARTMENT OF THE SENATE

PROCEDURAL INFORMATION BULLETIN

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For the sitting period 9 to 12 February 2015

The first sitting period for 2015 began with political drama but, in procedural terms, proceeded without incident.

CASUAL VACANCY

The resignation of Senator the Hon. John Faulkner on 6 February created a vacancy in the representation of New South Wales. The President informed the Senate of the vacancy on 9 February, at the same time tabling a copy of the letter to the State Governor notifying the vacancy. The NSW Parliament is not expected to meet before it is prorogued for an election at the end of March. In such circumstances, when a State Parliament is not in session, section 15 of the Constitution provides an alternative means of filling a vacancy, pending subsequent confirmation by the Parliament in a new session.

LEGISLATION

Several bills were agreed to by the Senate, some with vigorous debate on both the second reading and in committee of the whole on amendments. The Tax Laws Amendment (Research and Development) Bill 2013 was one such bill, agreed to with amendments moved by the Palmer United Party. An attempt by the Opposition to make the amendments prospective rather than retrospective was unsuccessful. The amendments were agreed by the House of Representatives.

Senators noted the contribution made by committees to the scrutiny of legislation and the minister with carriage of the Australian Citizenship Amendment (Intercountry Adoption) Bill 2014 used the opportunity of summing up the second reading debate to provide responses to issues raised in the report of the Parliamentary Joint Committee on Human Rights and the majority report of the Legal and Constitutional Affairs Legislation Committee, as well as to recommendations in the dissenting report by the Australian Greens. The same minister noted queries raised by the committee in relation to the Customs Amendment Bill 2014, and that a response had been provided to the committee's apparent satisfaction.

There was some criticism of the innocuous nature of some bills programmed for debate during ordinary government business time (rather than the time for non-controversial legislation on Thursday). However, the Acts and Instruments (Framework Reform) Bill 2014 was dealt with during the time for non-controversial legislation, having been the subject of close scrutiny by the Legal and Constitutional Affairs Legislation Committee and the Scrutiny of Bills Committee. Comments by the committees concerned, among other things, the scope of the discretion given to First Parliamentary Counsel to make corrections when consolidating legislation, and the transparency of these processes. A replacement explanatory memorandum was tabled during the second reading debate in response to issues raised by the committees, and

a Government amendment to provide for a review of the Act after 5 years was agreed to in the committee stage.

FORMAL MOTIONS

Over the years, senators have expressed frustration with the limitations of the formal business procedures which allow motions to be moved at a specified place in the routine of business each day and put to a vote without amendment or debate. There is no opportunity for senators to explain their stance on a matter other than by short statements which, in recent years, have been allowed by leave. The procedure has often been identified as being unsuitable to deal with complex policy motions, including those dealing with foreign affairs. One option is for senators to deny formality or, in other words, to indicate objection to motions being fast-tracked in this way. This occurred on two occasions on 9 February in relation to proposed motions on the controversial Boycott, Divestment and Sanctions Campaign and the equally contentious recognition of Palestine.

During discovery of formal business on 12 February, the Deputy President drew the Senate's attention to the Procedure Committee's exhortation in its *Second report of 2011* against senators using statements by leave to amount to a *de facto* debate, contrary to the standing orders.

ORDERS FOR PRODUCTION OF DOCUMENTS

The Senate continued to make frequent use of orders for the production of documents to seek information from the executive government about matters of controversy or concern, with the following outcomes:

- the independent report of the Air Warfare Destroyer Program together with reasons for any commercial-in-confidence redactions (2 December 2014) – a joint response from the Ministers for Finance and Defence referred to reasons given in responses to previous orders for the documents, namely, disclosure of Cabinet deliberations and the likelihood of disclosure damaging the Commonwealth's commercial interests (presented out of sitting on 5 December 2014) (see Bulletin [No. 284](#));
- reports on the Nationally Consistent Collection of Data on students with disability (3 December) – response from the Minister for Education and Training (Mr Pyne) declining to produce the reports on the basis that they had been prepared jointly by all Australian governments and non-government education authorities, were working documents and, after consultation, the minister claimed that release would present a significant risk to the ongoing collaborative relationship between these parties (not an established public interest immunity ground) (11 February);
- the final report of the Productivity Commission on child care and early childhood learning (3 December) – response from the Minister for Finance indicated that the report would be tabled by mid-March 2015 in accordance with the statutory timetable in the *Productivity Commission Act 1988* (presented out of sitting on 5 December 2014);
- summarised findings of the PWC report on data retention or a copy of the report

with commercially sensitive information redacted and a timeline for developing cost estimates for the policy (3 December 2014) – response from the Attorney-General repeated an earlier claim of Cabinet confidentiality in respect of the report (see Bulletin [No. 288](#)) but provided a timeline in response to the second part of the order (presented out of sitting on 5 December 2014);

- a twice repeated order for preliminary and interim reports of the National Mental Health Commission on its mental health review, also rejecting grounds previously given for non-compliance (9 and 12 February) – responses from the Assistant Minister for Health in similar terms indicating that the reports sought were deliberative in nature and would not be produced but that the final report and the Government's response to it would be released in due course (11 and 12 February);
- information not provided by the Director of Fair Work Building and Construction in answers to Supplementary Budget Estimates questions on notice (10 February) – response by the Minister for Employment indicated that the answers had already been provided but avoided the issue of information not provided in those answers (12 February);
- the Intergenerational Report (required by the *Charter of Budget Honesty Act 1998* to have been released on 1 February 2015 (10 February) – response by the Minister for Finance indicated that release of the report was a priority, the report involved complex modelling, and that it would be released at the earliest practical time (10 February);
- the review by Mr Phillip Moss into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru (10 February) – response by the Assistant Minister for Immigration and Border Protection indicated that the intention was to release a public version of the report on the departmental website, noting that many people who spoke to the review did so on the basis that their identities would be protected (11 February);
- a statement by the responsible minister clarifying the Government's commitment to address homelessness and affordable housing beyond June 2015 (10 February) – response by the Assistant Minister for Social Security challenging assertions in the motion, providing information about funding available for the 2014-15 financial year and indicating that further funding would be considered in the 2015-16 Budget context (12 February).

A different approach was taken with an order for production of a statement on the status of negotiations on the proposed Trans-Pacific Partnership, agreed to on 11 February. After noting an earlier order of the Senate of 11 December 2013 requiring bilateral and plurilateral trade agreements to be tabled at least 14 days before signing, the order provided for a senator to move a motion to take note of the statement or, if the statement had not been provided by the deadline, immediately to move a further motion in relation to the minister's failure to comply with the order. Before the deadline on 12 February, the minister representing the responsible minister made a statement in response to the order. The Leader of the Opposition in the Senate who initiated the order then took note of the statement and a short debate followed.

CLOSING THE GAP

Late in 2013, the Senate agreed to a continuing order for consideration of annual reports by the Prime Minister on progress in meeting the COAG Closing the Gap targets (see Bulletin Nos. [277](#) and [278](#)). On 11 February, the Senate agreed to a one-off order for consideration of this year's report which ensured up to two hours' debate after presentation. The report was presented later that day and debated in accordance with the order.

PRIVILEGES COMMITTEE REPORT ON USE OF CCTV MATERIAL IN PARLIAMENT HOUSE

The recommendations of the 160th report of the Privileges Committee were adopted on 12 February, the report having been presented at the end of last year (see Bulletin No. [288](#)).

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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