



Procedural Information Bulletin

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For the sitting period 20 to 31 March 2017

Legislation

In an echo of the previous sittings, the Senate again passed several bills initiated during the sitting period. The government's extensive [Omnibus Savings](#) bill introduced in February was superseded by a pair of new bills, introduced on 22 March, separately dealing with social security measures and with the government's proposed child care package. Sittings were extended, enabling those bills to proceed through all stages by the end of the following day, one with amendments proposed by cross-bench senators. A proposal to give precedence in debate to an opposition bill on Sunday penalty rates was defeated, but that bill was subsequently passed under a motion requiring a final vote before the Senate proceeded to government bills on its last sitting day. The main purpose of that motion, however, was to again extend hours for the consideration of two government bills.

The Human Rights Legislation Amendment Bill 2017 was introduced in the Senate by the Attorney-General on 22 March 2017 and referred the following day to the Legal and Constitutional Affairs Legislation Committee for a short inquiry. Proposals for a longer inquiry were resisted on the basis that the Joint Human Rights Committee had recently inquired into connected matters. Provisions dealing with section 18C of the Racial Discrimination Act lacked majority support in the Senate and were excised from the bill, while proposed procedural changes affecting the work of the Australian Human Rights Commission were approved with several government amendments. The resulting bill – absent the 18C changes – was passed by the House after a truncated debate.

The Treasury Laws Amendment (Enterprise Tax Plan) Bill 2016, proposing to progressively reduce corporate tax rates and arrangements, was considered during the same extended hours, and agreed to with government amendments which narrowed the application of the bill (to small and medium-sized businesses, by reference to their turnover), and changed the pace of the reductions. The amendments will be considered by the House when it next meets, on Budget day.

The fortnight was highly productive in terms of legislative outcomes: with 21 government bills passed, seven with amendments. Further proceedings are pending in relation to one bill – the Transport Security Amendment (Serious or Organised Crime) Bill 2016 – with the House rejecting or replacing a number of the amendments made by the Senate.

Committees

Two inquiries became one on 21 March 2017, when the Rural and Regional Affairs and Transport References Committee provided a report on two overlapping inquiries on the importation of seafood and seafood products, recommending they be consolidated and referred afresh. The Select Committee on Strengthening Multiculturalism was established in November 2016 with a provision that it not commence until 27 March 2017, when another Select Committee – on Electricity Infrastructure –

came to an end. That committee was given a short extension, to 7 April. When a new matter relating to health insurance and medical costs was referred to the Community Affairs References Committee on 29 March, the chair of that committee indicated the committee would not commence its work on that inquiry for several months, noting the committee's current workload. In all, the Senate's legislation and references committees presented (approx.) 17 reports during the period (concluding 10 bill inquiries and seven references), and received 11 new bill inquiries and three new references.

Disallowance

The Senate's power to disallow legislative instruments – regulations, rules and so forth – is a key part of the parliament's oversight of the legislative power it routinely delegates to the executive government. The Regulations and Ordinances Committee undertakes scrutiny of disallowable instruments, testing them against its terms of reference (see [standing order 23](#)). The committee often gives 'protective' notices for disallowance. These effectively extend the statutory timeframe for the Senate to exercise its disallowance function, so that the committee may seek from ministers satisfactory responses to any concerns it may raise. The possibility of disallowance encourages productive consultation. It is therefore common for the chair of the committee to withdraw such notices, generally indicating that the committee's concerns have been met. Several examples were seen during this period.

On 21 March 2017, Senator Bernardi gave notice of a motion to disallow the [Extradition \(People's Republic of China\) Regulations 2017](#), which was to have given effect to a treaty signed on 6 September 2007. Prior to the motion being moved, the regulations were [repealed](#). In this sense, the notice arguably had its intended effect. Senator Bernardi later postponed his motion until 21 June 2017, the last day of the disallowance period for the instrument. His decision to postpone, rather than withdraw, the notice may rest on some of the same protective purposes which saw debate and disallowance of another instrument last year in similar circumstances (see [Bulletin 309](#); *Odgers'* 14th edition, [p. 447](#)).

A proposal to disallow an instrument connected to the Cashless Debit Card Trial was unsuccessful, after debate on 29 March 2017.

Search warrants and the Senate

On 28 March 2017 the Privileges Committee presented its [164th report](#) on two matters connected to the execution of search warrants at a senator's office, at the home of one of his staff, and at Parliament House. To ensure the proper protection of material where parliamentary privilege may be involved, such warrants must be executed in accordance with a national AFP guideline, adopted in 2005 following agreement between the then Presiding Officers and Commonwealth Attorney-General. The background is in the committee's [163rd report](#) (see [Bulletin 306](#), [Bulletin 310](#)).

In the first matter, the committee examined the seized material for its connection to parliamentary business and recommended that the claim of privilege made over it should be upheld. The committee also considered how well the stated purposes of the national guideline had been met. The guideline is intended to enable claims of privilege to be made and determined, with seized material sealed until that question is resolved. The committee noted that 'Any practice which, in the meantime, allows the use of such material undermines that purpose.'

This provided the context for the second inquiry, involving allegations that information which should have been quarantined at the site of the Melbourne warrants, may have been used for unauthorised purposes. The committee found that an improper interference had occurred (because protections

attaching to parliamentary material had been diminished, to the possible detriment of a person) but refrained from recommending that a contempt be found, noting various mitigating factors. Moreover, the committee noted that an alternative remedy could be effected by the Senate upholding the privilege claim, and so withholding the seized material from the investigation and any future legal proceedings. The Senate adopted the committee's recommendations on 28 March 2017.

Questions, orders, explanations and inquiries

Following the tenor of the items recorded under this heading in [Bulletin 311](#), the Senate and senators again sought information from the government on a range of topics and took procedural steps to encourage compliance.

The procedures in [standing order 74\(5\)](#) for seeking and debating explanations for unanswered questions were used on 4 occasions on 20 and 22 March, in relation to 13 questions. An order was agreed to on 28 March requiring the attendance of the Attorney-General to provide an explanation in relation to the Legal and Constitutional References Committee inquiry into the Bell Group litigation – progressed as a series of questions and answers – and allowing debate on the explanation.

Additional estimates hearings were also held before and during the period.

Nine new orders for documents were made, dealing with topics including the Future Submarine Project, the Bell Group litigation, the Northern Australia Infrastructure Facility and the Perth Freight Link, and numerous responses were made or tabled. Details of each of the orders made during the 45th Parliament can now be [tracked online](#), including the text of each order, procedural information and links to any statements made and documents tabled.

Urgency motions and MPIs

[Standing order 75](#) allows senators to propose an hour-long discussion or debate on each sitting Monday, Tuesday and Wednesday. The opportunity to do so on Thursdays was carved out of the standing orders in 2015, recognising the other significant opportunities for general business debates on that day. Standing order 75 evolved out of an ancient practice 'recognising the right of a minority to be heard before the business of the government began' (see the [Annotated Standing Orders](#) entry) but was rationalised into more or less its current form (albeit with a three hour time limit) in the 1970s.

Where more than one proposal is submitted at the appointed hour, the proposal for discussion is chosen by lot. During this fortnight, three or more proposals were lodged each day, each requiring a ballot, with 16 proposals received on 28 March 2017 alone. This is not quite a record: on 10 April 1989, 26 proposals were received, including 25 identical proposals from different opposition senators.

Adopting the process specified in standing order 7(4) for determining a tied ballot, proposals are drawn from a ballot box, and thereby excluded, until the last remaining is reported to the Senate. This process is perfectly sound and defensible when two or three proposals are lodged on any given day, but procedurally there is no reason to prevent a different ballot process being used.

Judgment: Culleton

On 3 February 2017, the Court of Disputed Returns held that Rodney Norman Culleton was incapable of being chosen as a senator in the 2016 federal election and ordered that the resulting vacancy be filled by way of a special count of the ballot papers, under the supervision of a single justice (see

[Bulletin 309](#)). Orders providing directions for the count were made on 2 March, and it was undertaken by the Australian Electoral Officer for Western Australia on 7 March, who reported to the court. On 10 March, the court made a final order, declaring the second Pauline Hanson's One Nation candidate, Peter Georgiou, elected to the vacant position. The President tabled copies of the various orders on 20 March 2017, and Senator Georgiou took his place the following Monday.

Judgment: Day

Those events bring to a close one of the matters the Senate referred to the court on 7 November last year. On 7 February 2017, the court reserved its judgment on the other matter, the qualification of former senator for South Australia, Bob Day. The President informed the Senate on 30 March that the court would hand down its judgment on 5 April 2017, at 10.15am.

RELATED RESOURCES

Dynamic Red – updated continuously during the sitting day, the Dynamic Red displays the results of proceedings as they happen.

Senate Daily Summary – a convenient summary of each day's proceedings in the Senate, with links to source documents.

Like this bulletin, these documents can be found on the Senate website: www.senate.gov.au

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