



Procedural Information Bulletin

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For the sitting period 8 to 10 May 2018

30th anniversary

At the start of the sitting on 9 May, the President relayed to the Senate a message from Her Majesty Queen Elizabeth II on the occasion of the 30th anniversary of the official opening by Her Majesty of Parliament House.

Qualification of senators

On 9 May the High Court made orders answering the questions referred by the Senate on 6 December last year concerning the qualification of Senator Gallagher (see [Bulletin 321](#)). The court considered whether, by taking the steps necessary to renounce her British citizenship prior to nomination, Senator Gallagher avoided disqualification as a dual citizen, even though the renunciation was not registered until after the election. Did the steps taken fulfil the requirements of what has come to be known as the reasonable steps test?

The court held in [Re Canavan \[2017\] HCA 45](#) that section 44(i) of the Constitution disqualifies a person who has the status of a foreign citizen, subject to a single exception; a ‘constitutional imperative’ that an Australian citizen not be ‘irremediably prevented by foreign law from participation in representative government’. In [Re Gallagher \[2018\] HAC 17](#) the court further detailed that exception. Where foreign law presents ‘something of an insurmountable obstacle’ to renouncing citizenship, a person taking all reasonable steps to do so may avoid disqualification.

However, the procedure for renouncing British citizenship was held not to be onerous. The issue here was merely one of timing, and the reasonable steps exception could not apply. As Senator Gallagher remained a dual citizen at the time of the election, the court declared her incapable of being chosen as a senator and ordered that the resultant vacancy be filled by a special count under the direction of a single justice.

Following the judgment, four members of the House of Representatives whose circumstances echoed those considered in the case resigned their places.

Legislation

Although short, the sitting week was productive in terms of legislative outcomes for the government, with 13 bills passing the Senate, including the Migration Amendment (Skilling Australians) Bill – passed with Opposition and crossbench amendments, to which the House agreed – and the Home Affairs and Integrity Agencies Legislation Amendment Bill. The latter bill amended 36 Acts to realign ministerial and departmental functions and powers following the establishment of the Home Affairs portfolio and changes to the Attorney-General’s oversight of intelligence, security and law enforcement agencies.

Various budget-related bills were introduced in the House, but none were dealt with by the Senate during the week. A number were, however, referred to legislation committees by way of the usual [selection of bills](#) process, including the bill to implement the centrepiece personal income tax cuts. The Senate also passed its usual motion referring [time-critical](#) bills to committees, upon their introduction in the House. This means inquiries can get under way during the upcoming estimates period, rather than awaiting the Senate's June sittings.

Proposed recommitment of a bill already passed

On 10 May the Senate passed a bill to establish the Regional and Small Publishers Innovation Fund, a grants scheme negotiated as part of the changes made last year to Australia's media laws. The bill passed the Senate without amendment but, after its third reading, senators sought leave to have the vote put again on a set of amendments proposed by the Australian Greens. Leave was not granted, but negotiations continued for a time behind the scenes.

There are two obstacles to revisiting a vote in these circumstances; one practical, the other, procedural. The practical obstacle is that the Senate cannot deal with a bill that has already been transmitted (or, for House bills, returned) to the House. In raising the matter at the earliest opportunity, Senators Hanson and Hanson-Young were seeking to ensure that the bill did not proceed beyond the reach of the Senate. The government indicated its agreement that the bill should not progress until the matter was settled, so the practical problem was avoided.

The procedural obstacle lies in the standing order 112(4), which provides that 'After the third reading no further question shall be put, and the bill shall be taken to have been passed by the Senate.' A motion by leave – that is, unanimous consent of all senators present – or moved following a suspension of relevant standing orders can set aside that restraint, although there are challenges to suspending standing orders where time is of the essence.

In order to have the vote put again, the Senate would have to agree to a motion (by leave, or after suspension) that the bill be recommitted (literally, returned to committee) and that the amendments be reconsidered. If that were achieved, it would also be open to the committee to consider further amendments, and the Senate would need to adopt the report of this new committee and take the vote on the third reading again.

Although rare, recommitment in such circumstances is not unprecedented. The last involved the [Education Services for Overseas Students Amendment \(Re-Registration of Providers and Other Measures\) Bill 2009](#), and a misunderstanding about non-government amendments. On this occasion, the President informed the Senate after question time that the recommitment would not proceed, so the bill went to the House unamended.

Orders for documents

On 10 May, the [Minister for Defence made a statement](#) relating to the Australian Industry Capability Plan and the Future Submarine Project, in accordance with an order made on 27 March. That statement was debated, and the government tabled a [redacted copy of the final plan](#) at the end of the sittings.

New orders for documents were made during the fortnight, on subjects including:

- outstanding questions on notice and estimates questions
- adjustment mechanism projects in the Murray-Darling Basin
- genetic control of invasive rodents.

Details of responses to these and earlier orders are published [online](#).

Disallowance

On 9 May the Senate resisted the postponement of a motion proposing to disallow the Basin Plan Amendment (SDL Adjustments) Instrument 2018. Instead, [the motion was debated](#) and defeated, so the instrument remains in effect.

Committee activity

The short sitting week saw numerous reports tabled covering legislation inquiries, examination of annual reports and previous estimates rounds. In addition, a new [Senate select committee on obesity](#) was established with a reporting date of 14 August.

Arrangements for estimates

A change was made to arrangements for the forthcoming Budget estimates round. The introduction of a public holiday in the ACT on the Monday of the second week of estimates meant that the final day of the hearings would be on a Friday rather than the usual Thursday. This was varied on the final sitting day to allow committees to schedule their hearings from Tuesday to Friday, or from Tuesday to Thursday and then again the following Tuesday.

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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