



Procedural Information Bulletin

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For the sitting period 13 to 23 August 2018

Business as usual

The political tumult of the fortnight barely registered in the Senate, other than as a topic of questions and debate, until the final sitting day. After a slew of ministerial resignations, the government presented a trimmed down ministry of five for a question time that was itself truncated by debate on an opposition motion of ‘no confidence’ in the government. Such motions may render the Senate’s verdict but, under Westminster convention, only a want of confidence in the lower House is fatal to a government (see the newly minted 7th edition of [House of Representatives Practice, at p. 319](#)). In any case, the motion was defeated; the Australian Greens supported the Opposition, while the other crossbench senators either supported the Government or abstained. The Senate then returned to its usual Thursday routine of business.

Senators

After a widely-reported exchange between two senators on the last sitting day of the Winter sittings, the President commenced the fortnight with a [statement to the Senate about unparliamentary language](#). He noted the procedural constraints on dealing with such matters where they do not occur within formal proceedings; a matter he referred to the Procedure Committee. Senator Leyonhjelm was censured in connection with the exchange on a close vote the following day.

Senator Anning made his first speech on 14 August, sparking debate and the passage of a motion affirming Australia’s non-discriminatory immigration policies, which repudiated part of the senator’s speech. A proposal from the Australian Greens to move to censure Senator Anning in relation to the matter did not find broad support.

Australian Greens Senator Lee Rhiannon resigned her place on 15 August. Her replacement, Senator Mehreen Faruqi, was chosen by a joint sitting of the New South Wales Parliament later the same day. Senator Faruqi was sworn in on 20 August and made her first speech the following day. Another Australian Greens Senator, Andrew Bartlett, also made his final speech in the Senate, prior to his resignation on 27 August. It is expected that the Queensland Parliament will select former Senator Larissa Waters to the vacancy, returning her to the Senate after her resignation and disqualification under s. 44(i) of the Constitution last year.

Legislation

A private senator’s bill – the [Restoring Territory Rights \(Assisted Suicide Legislation\) Bill 2015](#) – was given precedence in debate over 3 days in the first sitting week. The bill aimed to restore to the Australian Capital Territory and the Northern Territory the power to make laws on voluntary euthanasia, which was removed by the *Euthanasia Laws Act 1997*. Sixty-four senators contributed to the second

reading debate. Media reports had suggested the bill would pass the Senate by a handful of votes, however, the second reading vote was lost on a division; 34 Ayes to 36 Noes.

The other main focus of legislative action during the fortnight was on the [Enterprise Tax Plan No. 2 bill](#), which sought to extend to large corporation the reductions in the company tax rates legislated for small- and medium-sized businesses last year. It was widely expected that the bill would be narrowly defeated at the second reading stage but it passed by one vote, with some crossbench senators interested in seeing the outcome of proposed amendments before determining their final positions. Compromise amendments circulated by the Finance Minister late in the second reading debate proposed to exclude certain large ADIs (a.k.a. the big banks) from the tax cut, and there was somewhat acrimonious debate about the meaning of the vote which saw their defeat. Amendments circulated by crossbench Senator Hinch to exclude companies with turnover above \$500m were not supported, and the unamended bill was defeated at the end of the committee stage.

[Procedurally, this outcome is somewhat obscure. It occasionally arises because of the expedited procedures invariably adopted for the consideration of bills. In theory, a committee is delegated the task of determining the form of a bill to be returned to the Senate for its final, third reading vote. Under standing order 116, a bill theoretically proceeds through the committee stage ‘clause by clause’, with the committee asked to consider whether each clause or schedule ‘stand as printed’ or, if amendments are made, ‘stand as amended’ (so. 118). However, the Senate has not followed this practice for decades. Instead, each committee considers the bill ‘as a whole’. A question is put, ‘that the bill stand as printed’ and, if amendments are made, the question becomes ‘that the bill, as amended, be agreed to’. The desire to vote against every stage of a bill occasionally leads to the defeat of the motion that the bill ‘stand as printed’ (or one of its variants). The subsequent adoption of that motion by the Senate signals the defeat of the bill, and no third reading vote is held. A stalemate can arise where equally divided votes are in play. Equally divided votes are lost, so it is possible to defeat a bill in committee, but also lack the numbers to require the committee to report the outcome. Similarly, if the motion to adopt the report from a committee is lost, the bill is recommitted for further consideration.]

Another 20 or so government bills were passed, one with amendments. Two government bills initiated in the Senate were passed with amendments made by the House, agreed to after brief consideration of those amendments in committee of the whole.

Disallowance

Five motions to disallow Marine Park Network Management Plans were defeated on 16 August, the last day for their consideration, after being given precedence in debate. The outcome echoed consideration of earlier motions to disallow the plans on 27 March (see [Bulletin 323](#))

One of the bills on the Senate’s agenda was the Social Services Legislation Amendment (Cashless Debit Card Trial Expansion) Bill 2018, whose committee stage was interrupted by other business on the final sitting day. Earlier in the week the Senate had considered motions to disallow determinations which expand existing elements of the scheme. The motions were unsuccessful, so the determinations stand.

Let me count the days, again

Barely noticed in the rush of non-controversial legislation passed on 16 August, the [Legislation Amendment \(Sunsetting Review and Other Measures\) Bill 2018](#) made various amendments to the *Legislation Act 2003* and the *Acts Interpretation Act 1901*, principally in relation to the review of

sunsetting arrangements for delegated legislation. The bill inserts a definition of a sitting day, removing the concern that overnight suspension might create an extra sitting day for disallowance purposes (see [Bulletin 316](#)). It also enhances improve parliamentary oversight of delegated legislation where an instrument is rectified after its initial registration, meeting concerns expressed by the Senate's legislative scrutiny committees (see [Scrutiny digest no. 8 of 2018](#)).

Orders for the production of documents

On 14 August, the Senate agreed to a motion requiring the Commissioner of Taxation to provide to the Economics Legislation Committee information regarding some financial sector entities which did not submit tax returns between 2000 and 2016. The Commissioner tabled an interim response through the Minister for Finance explaining that the order was being considered but that it was not possible to provide the information within the required timeframe. A public interest immunity claim was also foreshadowed.

Among the other [orders and responses](#), the Senate agreed to a motion requiring the Minister representing the Minister for Defence Industry to make a statement in the Senate on 17 September explaining why an earlier order relating to defence industry projects had not been complied with. The motion followed the now-established practice of providing an opportunity to debate the statement. The Senate did not support a further provision, proposing to banish the minister from the frontbench Senate seats reserved for ministers, pending compliance with that order.

Committee activity

Two competing motions using similar language, one from the Opposition and one from the Australian Greens, sought to refer the government's My Health Record system for inquiry by different committees, chaired respectively by an Opposition and a Greens senator. The matter was eventually referred to the Community Affairs References Committee, chaired by a Greens senator and the other motion was withdrawn.

Notable committee reports tabled during the sitting fortnight included an examination of the selection process for a national radioactive waste management facility in South Australia. There were also myriad reports on proposed legislation.

In addition to the regular references to legislation committees from the Selection of Bills Committee, operating in accordance with [standing order 24A](#), an inquiry into support for Australia's thalidomide survivors was referred to the Community Affairs References Committee for report by 28 November.

Minister from another parliament

The Minister for Climate Change and Sustainability in the ACT government appeared as a witness at a hearing held by the Select Committee on Electric Vehicles. Senate committees can request the appearance of a minister or member from another parliament but, as a matter of comity between legislatures, is unable to compel their attendance.

Qualification matters

Another [section 44](#) footnote this fortnight. A summons filed in the High Court on 4 July this year sought to set aside the court's [unanimous judgment](#) that Rod Culleton was incapable of being chosen as a

senator in the 2016 election (see [Bulletin No. 311](#)). The summons was [dismissed](#) on settled legal principles: the applicant had not demonstrated that exceptional circumstances existed which would warrant reopening the matter; the arguments – essentially challenging the court’s jurisdiction – ought to have been raised when the matter was originally heard.

The hearing touched on two matters of Senate procedure. The first was a Senate resolution that was said to ‘define’ or ‘waive’ privilege. The resolution in question, [privilege resolution 10](#), does neither, and nor does it purport to. The ‘privilege’ in question is a legal immunity against the use of parliamentary proceedings before the courts. Its current statutory form is found in s. 16 of the *Parliamentary Privileges Act 1987*, and its application and interpretation is a matter for the courts. The effect of the resolution 10, passed shortly after the Privileges Act commenced, was to dispense with an anomalous, historical practice requiring the Senate’s leave to admit evidence of its proceedings regardless of whether privilege was engaged. Neither House can waive statutory law by resolution.

The other procedural matter mentioned – that the Culleton reference to the Court of Disputed Returns was invalid, because the Senate was alleged to be inquorate when it was made – appears to be founded on a misunderstanding of the quorum requirements.

The quorum of the Senate – the minimum number of senators required to constitute a meeting – is 19, in accordance with s. 22 of the Constitution, and the *Senate (Quorum) Act 1991*, passed under that section. The observance of the quorum is a matter of practice and therefore a matter for the Senate. A quorum is required to constitute (that is, to form) a meeting of the Senate. After that, the temporary lack of a quorum does not halt proceedings, provided a quorum can be formed should any senator draw the lack of a quorum to the chair’s attention. Bells are rung for 4 minutes, as they are for a division, to allow a quorum to be formed, then proceedings continue. If a quorum is not formed in that time, the Senate is ‘counted out’ and adjourned.

The ability of the Senate and the House of Representatives to operate in this way is among the powers of the UK House of Commons inherited by the Commonwealth Houses under s. 49 of the Constitution at Federation. As former Clerk of the Senate Harry Evans told the Finance and Public Administration Legislation Committee on 18 February 2008, ‘...the Senate adheres to the Constitution by preserving the right of any senator to call attention to the lack of a quorum at any time.’

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.aph.gov.au/senate

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