



# DEPARTMENT OF THE SENATE

## PROCEDURAL INFORMATION BULLETIN

No. 287

31 October 2014

For the Supplementary Budget Estimates 20 to 24 October  
and the Sitting Period 27 to 30 October 2014

### SUPPLEMENTARY BUDGET ESTIMATES HEARINGS

#### NEW RULES

The supplementary budget estimates hearings proceeded under new rules that were agreed to on 25 June with the support of the Opposition and the Greens. Apparently arising from some dissatisfaction with the early adjournment of some hearings in the budget estimates round and the allocation of a greater share of the call to government senators than had been the practice in the past (among other things) the new rules were invoked in some committees to ensure questioning continued on particular programs until senators had exhausted their questioning. While this did lead to some programs running behind schedule, there was nonetheless sufficient flexibility to accommodate particular requirements. For example, the Finance and Public Administration Legislation Committee interrupted its extended consideration of the Department of Parliamentary Services on 20 October in order to honour a pre-arranged commitment to take evidence from the Office for Women at a particular time.

Different orders provide for three members of a committee to require additional hearings in different circumstances. One order allows members to require a hearing on a spill-over Friday (subject to the rule that no more than four estimates committees may meet at once). The other allows members to require an additional hearing other than on a spill-over Friday (and also subject to the rule of four). Some confusion arose about the circumstances in which the orders applied, whether there was a deadline by which they needed to be invoked and whether an additional hearing was required to be held within a specified time. The orders leave these matters to be determined by committees.

In addition to the usual Friday hearing on Indigenous matters, only one committee held a spill-over hearing (Community Affairs). Other committees will hold additional hearings on other dates.

As well as new machinery orders, there were also new accountability orders which were circulated to all agencies in advance of the hearings. The requirement to circulate these orders to all agencies before each round of hearings will ensure that their existence is brought to the attention of agencies while ever the Government Guidelines for Official Witnesses appearing before Parliamentary Committees remain so out of date (last updated 1989).

#### ACCOUNTABILITY

Orders of continuing effect for the production of documents require agencies to provide details of files, contracts, grants and appointments at certain times of the year. The failure of certain agencies to comply with these requirements was raised by senators during the hearings. One

department produced its lists of appointments and grants shortly thereafter. Another agency claimed to have created no files caught by the order for a considerable period of time. These orders constitute a simple transparency mechanism that ensures access by senators and the public to a range of administrative information.

Accountability mechanisms take a number of forms. The *Public Works Committee Act 1969* requires certain Commonwealth capital works to be referred to the committee. The Rural and Regional Affairs and Transport Legislation Committee heard evidence that \$96 million of expenditure on regional airport infrastructure had not been so referred.

There were no explicit public interest immunity claims made by ministers or statutory officers although numerous questions were taken on notice and the standard line about advice to government was trotted out on occasions, despite the relevant order explicitly excluding this as an acceptable ground for not answering a question. On one occasion, a minister appeared to be suggesting that, independently of the need to raise a public interest immunity ground, there was some other discretion that would allow departmental officers to follow what was claimed to be “usual practice” in not answering questions about the attendance of departmental officers at certain meetings. Senators produced several examples of contrary practice and advice from the Clerk reaffirming the process for declining to answer questions. The minister took the question on notice.

### HEARINGS NOT COMPLETED

The death of former Prime Minister the Hon E.G. Whitlam, AC QC, in the early hours of 21 October led to that day’s hearings being adjourned as a mark of respect, an unprecedented occurrence during estimates. As a consequence, another day was scheduled in order for the program of hearings to be completed (20 November).

### TOPICS OF INTEREST

As usual, many topics of interest were raised, including:

- security arrangements at Parliament House;
- the commissioning of photographs for an exhibition marking the 25th anniversary of Parliament House;
- the cost of maintaining detention centres on Nauru and Manus Island;
- the work of the Parliamentary Budget Office;
- appointments to the appointments panel for ABC and SBS non-executive Board positions;
- Australia’s contribution to efforts to contain the Ebola virus;
- where Australia’s new submarine fleet would be built;
- policy work on the Paid Parental Leave scheme;
- the Minister’s response to comments by the head of ASIC relating to white collar crime;

- ABS data;
- the ANU's investment policies;
- proposed pay rises for ADF members;
- the withdrawal of the AFP presence at Hobart Airport;
- job losses at the ATO;
- the cost of inquiries into the Health Services Union and related matters by the Fair Work Commission.

## SITTING PERIOD 27 TO 30 OCTOBER 2014

The practice of the Senate adjourning as a mark of respect following the death of a serving or former Prime Minister was adhered to following the death of Mr Whitlam, and the Senate adjourned accordingly on 27 October following a lengthy condolence debate.

### LEGISLATION

The main item of business early in the week was the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014 to which a large number of Government amendments was moved following the Government's acceptance of all the recommendations made in respect of the bill by the Parliamentary Joint Committee on Intelligence and Security. Numerous amendments were also moved by the Australian Greens and a small number proposed by Senator Leyonhjelm and the Opposition. All of these were unsuccessful. The bill was dealt with under a limitation of debate.

During the committee stage on the bill on 29 October, the Chair of the Scrutiny of Bills Committee tabled a further report on the bill. Standing orders provide that documents may be tabled at any time when there is no other business before the chair (SO [63](#)) but it is an established practice that documents may also be tabled during consideration of a relevant matter. For committee reports, this is based on the absence of any rule preventing it but also on the principle that, if committees have material to report that is relevant to a matter under consideration, it would be anomalous if they were required to seek leave to do so or to wait until after the relevant matter had concluded.

Following the negotiation of agreements between the Government and minor parties and independent senators, the Carbon Farming Initiative Amendment Bill 2014 was brought on for debate on 30 October after a suspension of standing orders to extend the hours of meeting for that purpose. There was insufficient support for a limitation of debate on the bill and the Senate therefore continued sitting until it concluded consideration of the bill.

The bill was finally passed in the early hours of 31 October with numerous amendments moved by the Government, Senator Xenophon and Palmer United Party senators. Other amendments were not supported.

Two bills containing budget measures relating to the Social Services portfolio were discharged from the Notice Paper on 28 October, possibly signalling a change in strategy on budget measures stalled in the Senate.

### DISALLOWANCE MOTION TAKEN OVER

A disallowance motion, notice of which was given by the Chair of the Regulations and Ordinances Committee in relation to the controversial Corporations Amendment (Streamlining Future of Financial Advice) Regulation 2014, was taken over by Senator Dastyari after the Chair indicated an intention to withdraw the notice. Standing Order 78 sets out the mechanism for withdrawing disallowance notices to preserve the rights of senators in the context of the time limits prescribed by the *Legislative Instruments Act 2003* for dealing with disallowance matters.

### ORDERS FOR PRODUCTION OF DOCUMENTS

Senator Cormann, as the originator of the "Cormann motion" of 13 May 2009 on the process for making public interest immunity claims, continued to set the standard for providing well-argued and soundly-based public interest immunity claims and for producing documents whenever possible.

An order for legal advice referred to in a Delegated Legislation Monitor issued by the Regulations and Ordinances Committee was met with a claim based on legal professional privilege and Cabinet confidentiality. However, the claim was accompanied by a detailed explanation of the various regulation-making powers in the Corporations Act that underpinned different aspects of the regulations in question.

An order agreed to on 28 October for a copy of a Future Fund analysis relating to climate change risks to the fund's investments through the Asset Owners Disclosure Project 2014 survey was responded to the following day with the information that the fund had not participated in the 2014 survey or previous surveys. However, Senator Cormann then provided an explanation of how the Future Fund did incorporate environmental and other risks into its decision-making.

The Attorney-General complied in full by the due date with an order for a copy of the latest discussion paper on data retention (See Bulletin Nos. [285](#) and [286](#)).

An order agreed to on 29 October for a copy of the advice informing the decision of the Minister for Immigration and Border Protection to suspend the humanitarian intake from Ebola-affected countries was met with a brief public interest immunity claim based on potential damage to national security, defence and international relations and disclosure of Cabinet deliberations.

An order for the NBN Corporate Plan 2014-17 falls due on 24 November. Other proposed orders were not dealt with on 30 October when procedural disputation shortened, and then consumed, the time available for discovery of formal business on that day.

### ADDITIONAL SITTING WEEK

The procedural disputation referred to involved arrangements for dealing with the Carbon Farming Initiative Amendment Bill 2014 and the scheduling of additional sitting days on 17 to 19 November and a replacement supplementary budget estimates day on

20 November. The additional sitting days coincide with ceremonial addresses to the House of Representatives by the Prime Ministers of the United Kingdom and India, and the President of the People's Republic of China.

Sitting days for 2015 were also agreed to on 28 October.

## COMMITTEES

The new arrangements for presentation and consideration of committee reports and government responses provided opportunities to debate reports on Australia's future activities and responsibilities in the Southern Ocean and Antarctic waters, grandparents as carers, the future of Norfolk Island and a progress report from the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples. Other committee reports presented during the period are listed in the Senate Daily Summary.

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## 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).

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