



## DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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For the sitting period 22 February – 3 March 2016

### CASUAL VACANCY

Senator Ronaldson resigned on 28 February. The President notified the Senate of the resignation the following day, tabling copies of the resignation and his letter to the Governor of Victoria, notifying the vacancy in that state pursuant to section 21 of the Constitution.

Another resignation was foreshadowed when Senator Bullock announced in an adjournment speech on 1 March that he would be resigning from the Senate in the near future due to policy differences with his party.

### ELECTORAL MATTERS

The level of discussion over the possibility of a simultaneous dissolution was heightened by the introduction into the House of Representatives on 22 February of the Commonwealth Electoral Amendment Bill 2016 which proposes to change the Senate voting system, partially adopting the recommendations of the Joint Standing Committee on Electoral Matters in its report on the conduct of the 2013 election which produced the largest cross bench in the Senate's history. The bill, as introduced, allowed optional preferential voting for at least 6 parties above the line but made no significant change to below the line voting, apart from authorising a slightly greater tolerance for errors.

The issue dominated business throughout the fortnight. Referred by the relevant minister to the Joint Standing Committee on Electoral Matters (JSCEM) for inquiry and report by 2 March, the bill was passed by the House of Representatives on 24 February. For the purposes of that inquiry, both Houses agreed to a resolution allowing participating members to be appointed to the committee and numerous senators were appointed in that capacity. A motion to provide for a longer inquiry by JSCEM, moved by the Leader of the Opposition in the Senate and seven of the eight cross bench senators, was negatived on 24 February. The amendment would have pushed the committee's reporting date out till after the last possible day for a simultaneous dissolution (11 May).

When the Selection of Bills Committee report was presented on 25 February, the committee indicated that it was unable to reach agreement on referral of the bill. The Opposition moved an amendment to the motion for the adoption of the report to – among other things – refer the bill to the relevant legislation committee, the Finance and Public Administration Legislation Committee, for inquiry and report by 12 May (also beyond the simultaneous dissolution deadline). That part of the amendment was overtaken by a successful Government amendment which resulted in the bill not being referred.

On 29 February, when proposals were reported from JSCEM seeking authorisation to meet while the Senate was sitting, several senators were granted leave to make statements about the matter but no senator required that the question be put separately on those proposals which were thereby deemed to have been approved.

The bill's introduction in the Senate was delayed by intervening business until 29 February. When the message was reported and a motion to apply the expedited proceedings under standing order 113 moved by the minister, the Opposition exercised the right to have the question divided and then proceeded to debate at length the question, "That the bill may proceed without formalities". In what is believed to be a first, an amendment was moved to the motion to seek to delay proceedings on the bill till 12 May, thereby allowing senators who had spoken to the motion to speak again to the amendment. Such a motion is regarded as a procedural motion and there is therefore no right of reply on it.

In a related manoeuvre, formality was denied to the Government to move that the bill be exempted from the bills cut-off order in standing order 111. Debate continued on the application of the expedited proceedings until 2 March when, after further debate, the closure was moved on all further questions necessary to apply the expedited proceedings. Denied leave to move exemption of the bill from the bills cut-off in standing order 111, the Government successfully suspended and standing orders and achieved their objective, moving closure on all the questions required to do so. Debate then proceeded briefly on the motion for the second reading.

Electoral matters also dominated other debates or discussions during the sitting period, being the subject of Matters of Public Importance on 23 February and 1 March, and urgency motions on 24 February and 2 March. The Australian Greens introduced a new private senator's bill on political donations and other measures on 2 March and used their general business time on 3 March to bring on debate on the Commonwealth Electoral Amendment (Donations Reform) Bill 2014, an earlier bill on the subject. The new bill was referred to the Finance and Public Administration Legislation Committee for inquiry and report by 17 June on the recommendation of the Selection of Bills Committee.

The [report of JSCEM](#), presented on 2 March, was also extensively debated in the time allowed by standing order 62(4). The report recommended that the bill be amended to include partial optional preferential voting below the line as well, and the Government circulated amendments to this effect on 3 March. Many other amendments have also been circulated by the Opposition and cross bench senators, signalling a substantial committee stage on the bill in the next sitting period.

## OTHER LEGISLATION

Among the bills passed during the fortnight was a bill to legalise medicinal cannabis. The scheme had initially been proposed as a private senators' bill with several sponsors, and had been examined by the Legal and Constitutional Affairs Legislation Committee which supported the bill in principle but recommended further consultations. The bill that passed reflected those developments.

The Senate also passed the Parliamentary Entitlements Amendment (Injury Compensation Scheme) Bill 2016 without amendment on 29 February. The bill provides for the first time since Federation a mechanism to establish an injury compensation scheme for members of parliament on the same basis as applies to Commonwealth employees under the *Safety, Rehabilitation and Compensation Act 1988*.

Bills intended to be dealt with as non-controversial bills were caught up in the controversy generated by the Electoral Amendment Bill. One such bill was "talked out" on 25 February. A motion seeking exemption for five non-controversial bills scheduled for debate on 3 March was denied formality on 1 March. When messages transmitting two other scheduled bills for concurrence were reported on 1 March, the Government was denied leave to move that those bills be exempted from the cut-off. The Government moved to suspend standing orders to overcome the denial of leave. Acrimonious

debate followed before the matter was ultimately resolved, allowing those bills to proceed. The Opposition failed in a manoeuvre on 2 March to bring forward debate on one of the affected bills, the Business Services Wage Assessment Tool Payment Scheme Amendment Bill 2016 which was required to overcome the consequences of a court decision that was disadvantageous to people with disability relying on the scheme. The bill was passed on 3 March.

Exemptions were granted for other non-controversial bills, some of which were passed in the time provided on 3 March.

The House of Representatives agreed to amendments made by the Senate to the Social Services Legislation Amendment (Family Measures) Bill 2015, the Corporations Amendment (Streamlining of Future of Financial Advice) Bill 2014 and the Tax Laws Amendment (Implementation of the Common Reporting Standard) Bill 2015 but disagreed to an amendment to the Communications Legislation Amendment (Deregulation and Other measures) Bill 2015, apparently for the reason that The House considered that the amendment was not consistent with the scope and principle of the bill, a reason which has not previously stopped the House from agreeing with amendments accepted by the Government to a bill. The Senate has never used this test in relation to amendments, relying on the broader test of relevance instead. That message had not been dealt with by the end of the sitting period

## DISALLOWANCE

A Customs (Anti-Dumping Review Panel Fee) Instrument was disallowed as formal business on 2 March, on the voices. There were no accompanying statements, meaning that there is no public record of why the instrument was disallowed and why the Government accepted the decision without dividing. For this reason, it is usual practice for disallowance motions to be debated.

## ANSWERS TO QUESTIONS ON NOTICE

[Standing order 74\(5\)](#) contains a useful accountability device to enable senators to pursue answers to questions that have been on the Notice Paper for more than 30 days. The procedure was employed on 24 and 25 February and 2 March, and succeeded in eliciting a further explanation in one case. Its companion procedure in standing order 164, to seek explanations for overdue returns to order, was used by Senator Xenophon on 23 February to probe for further information on the long-running tender and competitive evaluation process for the replacement submarines project and the quest for access to economic modelling produced by a particular firm.

## ORDERS FOR THE PRODUCTION OF DOCUMENTS

There was significant use during the fortnight of the procedure for ordering the production of documents. Orders agreed to in the previous sitting period for a copy of the Defence White Paper 2015 and the Lazard Scoping Study on the future ownership and operations of Defence Housing Australia (see [Bulletin No. 300](#)) were not complied with. The Minister for Defence indicated that the 2016 White Paper would be released in the first quarter of the year (it was released on 25 February and tabled as a ministerial statement on 29 February), but that responsibility for the Lazard Scoping Study rested with the Department of Finance.

Other orders were agreed to as follows:

- for documents about the restructuring of CSIRO Oceans and Atmosphere Division (agreed 24 February, response tabled 3 March indicating that the documents could not be produced as they were not in the possession of the minister)
- for details of government work outsourced to foreign companies (agreed 24 February, partial response tabled 3 March indicating that the Government was not in possession of all the requested information and that production of all further details would require significant resources; senators invited to seek further details of particular contracts in respect of which the Government reserved its right to assert (sic) public interest immunity)
- for documents about the restructuring of CSIRO Oceans and Atmosphere Division held by CSIRO or the Minister (agreed 29 February, response tabled 3 March indicating the Government was not in possession of the information sought, asking CSIRO for it would be a significant and unreasonable diversion of resources and, in any case, senators should consult the evidence given by CSIRO at the last estimates hearings)
- for documents relating to an \$18 million communications campaign funded within the Infrastructure Investment program (agreed 29 February, due 15 March)
- for documents recording communications between the AEC and the Department of Finance (and various ministers) concerning changes to the Senate voting system (agreed 2 March, response tabled 3 March producing some documents, some with redactions and some not provided on the ground that they formed part of Cabinet deliberations or would harm the commercial interests of the Commonwealth if disclosed; some names of junior officers also redacted)
- for documents recording the agreement between the Government and the Australian Greens on changes to Senate voting (agreed 3 March, response tabled by the same-day deadline indicating that there were no such documents)
- for documents relating to the indexation of school funding (agreed 3 March, due 15 March)
- in relation to an order of 17 November 2014 for economic modelling produced by a particular firm on the long-running tender and competitive evaluation process for the replacement submarines project (see above under 'Answers to questions on notice') and a Cabinet in confidence claim made on 23 February 2016, a copy of the independent legal advice on which the Minister's public interest immunity claim was based (agree 3 March, due 15 March).

On 3 March, the Opposition kept up the pressure by seeking explanations for orders relating to the CSIRO and AEC not provided by the deadlines. After four such requests during the morning, responses and/or documents were provided in relation to four orders, as noted above.

## UNPARLIAMENTARY LANGUAGE

The President made a lengthy [statement](#) on 29 February on the use of unparliamentary language in quotations, an issue that had aroused concern the preceding week in question time when highly derogatory language allegedly used towards building and construction industry watchdog officials was quoted extensively by the Minister for Employment, Senator Cash.

The President confirmed the principle that quoting another source does not allow a senator to bypass the normal rules in relation to unparliamentary language. He referred to the limits that all Houses place on free speech by their rules of debate. Distinguishing between language that was unacceptable because it was contrary to the various prohibitions in standing order 193 and language that was regarded by the chair as unacceptable in debate, the President suggested that contentious language (not otherwise contrary to standing order 193) should only be quoted where it was strictly necessary to the point being made. Acknowledging senators' rights to freedom of speech, the President reminded them of their obligations under Privilege Resolution 9. He urged them to be mindful of the wider audience, including children, when quoting from sources containing offensive material, and undertook to refer the matter to the Procedure Committee for consideration of the general principles.

After the statement was made, ministers appeared to adjust their answers accordingly.

## COMMITTEES

The committee juggernaut continued. Some substantial references inquiries were completed, including on the following matters:

- the Australian grape and wine industry (Rural and Regional Affairs and Transport)
- a national long service standard and portability of long service and other entitlements (Education and Employment)
- "Revenge porn" (Legal and Constitutional Affairs)
- the first part of a major inquiry into the scrutiny of financial advice (on land banking) (Economics).

Committees were granted numerous extensions and also received new references, including as a result of a vote deferred from 4 February when the potential impact of exploratory oil drilling in the Great Australian Bight was referred to the Environment and Communications References Committee. The Foreign Affairs, Defence and Trade References Committee received a new reference on "resistance to interrogation" training given to members of the Australian Defence Forces, following some serious complaints. The Economics References Committee's inquiry into financial advice reforms was expanded to include the life insurance industry.

Legislation committee reports on bills continued to be presented in a timely manner and legislation committees also presented reports on their examination of the additional estimates and on annual reports. All legislative scrutiny committees presented their regular weekly reports.

A new select committee was established on the question of whether there should be a National Integrity Commission. As has become common in recent motions of this type, the resolution of appointment provided for a particular cross bench senator, Senator Wang, to be the committee chair. Senator Siewert was denied leave to move an amendment to the membership formula for the committee but this did not appear to alter the Greens' support for the committee which is to report by 22 September.

Most of the legislation committees presented their reports on additional estimates on 1 March. On 23 February, the Senate agreed to an instruction to the Foreign Affairs, Defence and Trade Legislation Committee to reconvene before 10 March to take evidence from a named official who had been

involved in the economic modelling of certain defence procurement projects. While such instructions to committees are not uncommon, the requirement for a named official to appear is unusual.

## OUTLOOK

With three scheduled sitting days till the end of the autumn sittings, the Manager of Government Business gave notice of a motion for extended hours during the final week. The notice also prioritised certain business. The notice includes the Commonwealth Electoral Amendment Bill 2016 but not the bills to re-establish the Australian Building and Construction Commission (which were widely viewed as further potential double dissolution triggers). This led to further speculation that there would be no simultaneous dissolution.

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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 can be found on the [Senate website](#).

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