

# HOUSE REVIEW



## Selected features of House of Representatives business

Sitting period 13-22 June 2017 (no. 3)

This third edition of House Review discusses the passage of the Budget bills; receipt and consideration of a private Senators' bill; consideration of a bill to amend the *Fair Work Act 2009* and proposed Opposition amendments; the Speaker's exercise of his casting vote; and passage of the Australian Education Amendment Bill 2017. Some other events are reviewed, along with interaction with the Senate.

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### Legislation

#### *Introductions*

During the fortnight more than 30 bills, some of them much anticipated, were introduced in the House. They included the Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017, the Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017, and the Social Services Legislation Amendment (Welfare Reform) Bill 2017.

#### *Private Senators bill, resumption of debate, and Speaker's exercise of casting vote*

On 15 June, shortly after Question Time, the Speaker reported a Senate message transmitting the [Banking and Financial Services Commission of Inquiry Bill 2017](#). The message informed the House that the bill had passed the Senate and was ready for the concurrence of the House. The bill was sponsored by several private Senators from the minor parties. It is relatively unusual that the Senate passes a private Senator's bill for transmission to the House and the bill had received considerable public attention earlier in the day when it passed the Senate. After the message was reported and the formal first reading was made by the Clerk, the Member for Melbourne, Mr Bandt, moved that the bill be read a second time and made a second reading speech. As the motion was moved by a private Member, the bill was immediately characterised as a private Member's bill. This will bring it within the remit of the House [Selection Committee](#) to allocate time for future consideration but at the time it also meant that a seconder was required. The Member for Kennedy, Mr Katter, seconded the motion and made a second reading speech.

Standing orders provide that at the end of a Member's speech following the moving of the second reading of a bill, debate must be adjourned, to be resumed at a future sitting. When the Leader of the House moved the usual motion for adjournment of the debate, the Manager of Opposition business asked that the questions on the adjournment of debate and the date for resumption of debate be put separately. After the question of the adjournment of the debate had been resolved, the Manager of Opposition Business moved an amendment to the usual motion that debate be adjourned to the next sitting, specifying instead, private Members' business time on 14 August for second reading debate and 4 September for a third reading. The amendment was seconded and debate continued. If agreed, the amendment would signal to the Selection Committee the House's wish for the bill to be treated differently from the usual standing order provisions for private Members' bills that the Selection Committee is required to implement.

Debate on the proposed amendment to the motion continued until the Manager of Opposition Business moved ‘that the question be now put’ (the ‘closure’). On division, the numbers were equal: 70 ‘ayes’ and 70 ‘noes’. In accordance with the Constitution (s.40) and standing orders, the Speaker exercised a casting vote, in this instance with the ‘noes’. The Speaker gave his reason: in accordance with the principle of allowing debate to continue where possible. The closure motion therefore failed and debate continued until the automatic interruption at 4.30pm for the adjournment debate. (If the closure motion had succeeded the question would then have been put immediately on the proposed amendment. Then, provided all this occurred before 4.30 when debate would need to be interrupted to allow for the adjournment debate, the question on resumption of debate—as amended, if the amendment had succeeded—would have been decided.)

#### *Passing the House—Budget bills*

After an extensive consideration in detail stage on [Appropriation Bill \(No. 1\) 2017-2018](#) and agreement to proposed expenditure for various portfolios, on 15 June the Federation Chamber agreed to the question that the bill be reported to the House without amendment. The other Budget bills—[Appropriation Bill \(No. 2\) 2017-2018](#) and [Appropriation \(Parliamentary Departments\) Bill \(No. 1\) 2017-2018](#)—were called on in turn, the question on the second reading put and passed, and the question on the bill being reported to the House was agreed to in each case. After Question Time on 15 June the Speaker reported that Appropriation Bill (No. 1) had been fully considered by the Federation Chamber and agreed to. Then a Minister moved immediately (by leave) that the bill be read a third time and the question was carried. The other two bills were put through the same process and later in the afternoon were transmitted to the Senate, with the usual formal messages reporting their passage through the House and seeking the Senate’s agreement. (See [House Review](#) editions 1 and 2 for discussion of the earlier stages of the bills and the section ‘Interaction with the Senate’ below.) On 19 June the Senate passed the bills without amendment and a message from the Senate to that effect was reported to the House on 20 June.

#### *Passing the House—a bill to amend the Fair Work Act 2009*

On 20 June the House completed the second reading debate on the [Fair Work Amendment \(Repeal of 4 Yearly Reviews and Other Measures\) Bill 2017](#). The bill is an amending bill comprising three schedules: 1—4 yearly reviews of modern awards; 2—procedural requirements in enterprise bargaining; and 3—Fair Work Commission Members. The long title that formally defines the scope of the bill is: ‘A Bill for an Act to amend the *Fair Work Act 2009* and for related purposes’, giving it a broader scope. The Member for Gorton, Mr O’Connor, had earlier moved a second reading amendment and this was defeated on the voices. The question on the second reading was carried on the voices. Government detail amendments were then proposed and agreed to, again on the voices.

Mr O’Connor moved two Opposition detail amendments that would amend the *Fair Work Act 2009* by inserting a new schedule: ‘3A—Protecting take-home pay’. The Leader of the House submitted that the proposed amendments were out of order as they related to penalty rates and so were not relevant to the bill. The Speaker found they were in order, having noted the long title and the amending nature of the bill: for an Act to amend the *Fair Work Act 2009*. After debate, the Leader of the House moved the closure (‘that the question be now put’). This was agreed to on the voices but on the subsequent, substantive question—that the amendments proposed by Mr O’Connor be agreed to—the House divided and the proposed amendments were defeated, ‘ayes’ 71; ‘noes’ 73.

Mr O’Connor then moved two further Opposition detail amendments. These proposed to insert a new ‘Schedule 5—Protecting take-home pay for all workers’ to the *Fair Work Act 2009*. The text of the proposed schedule was in the same form as a [private Member’s bill](#) that had been presented by the Member for Dawson, Mr Christensen on 19 June. The Leader of the House raised as a point of

order the similarity of the proposed amendments to those that had just been defeated and the Speaker ruled the amendments were sufficiently different as to be in order. The Leader of the House's closure motion was agreed to on the voices. On the substantive question—that the amendments proposed by Mr O'Connor be agreed to—the House divided, 'ayes' 72 (this time including Mr Christensen); 'noes' 73. The Member for Melbourne, Mr Bandt, then moved detailed amendments. Soon after, the Leader of the House's closure motion was agreed to on the voices. The House then divided on the substantive question—that the amendments proposed by Mr Bandt be agreed to. These amendments were also defeated, with the numbers reverting to 'ayes' 71; 'noes' 73. The necessary questions to finalise the bill were then agreed to on the voices.

On 22 June the Selection Committee reported its determination that the Fair Work Protecting Take Home Pay of All Workers Bill 2017 (Mr Christensen's bill) be inquired into by the House Standing Committee on Education, Employment and Training.

#### *Passing the House and the Senate—Australian Education Amendment Bill 2017*

The [Australian Education Amendment Bill 2017](#) amends the *Australian Education Act 2013* to change calculations for the funding of schools, among other things. It was introduced into the House on 11 May and passed on 29 May. The bill was introduced into the Senate on 13 June and the second reading was agreed to there on 21 June. Negotiations surrounding passage of the bill were well-publicised and it was clear it would need to be amended, if it were to pass the Senate. On 22 June, the last sitting day before the winter adjournment, the House suspended at 5.35pm to await return of the bill from the Senate.

At midnight the sitting resumed and a message from the Governor-General recommending an appropriation for the purposes of amendments to be moved by a Minister to a bill to amend the *Australian Education Act 2013* (in accordance with s.56 of the Constitution). This was followed by a message from the Senate returning the Australian Education Amendment Bill with requests for amendments. (The Senate had also made amendments to the bill but these would not be the focus of the House's attention until the Senate had finally passed the bill—see below.) After a brief debate the requested amendments were made by the House and at 12.05am on 23 June the House suspended again.

The bill was transmitted to the Senate with a message from the House indicating it had made the requested amendments. The bill passed the Senate, with amendments, and was read a third time. At 1.45am on 23 June, proceedings in the House resumed with the report of a message from the Senate returning the bill, with amendments. The amendments were debated briefly, the House divided and the amendments were agreed to. The House then adjourned at 2.02 am until 8 August 2017.

The cause of the House's sense of déjà vu was s.53 of the Constitution which limits the Senate's powers in respect of legislation that appropriates moneys or imposes taxation. If the Senate wishes to amend a bill in such a way it can only achieve this by sending a message to the House requesting that the House make the amendments. If the requested amendments are to be agreed to, a Governor-General's message recommending an appropriation for the purposes of the amendment is first reported. If the House makes the requested amendments, the bill is returned to the Senate, with a message indicating its agreement. The Senate then finalises its consideration of the bill.

[Last Week in the House](#) lists legislation considered by the House during the fortnight (and links to each bill's page with related documents and speeches, Bills Digests, information about any inquiries by parliamentary committees, and the capacity to track their progress).

#### **Ministerial statement**

On Tuesday 13 June, after the Acknowledgment of country and Prayers, the Prime Minister made a Ministerial statement, by leave. Mr Turnbull spoke on national security and referred to the recent deaths of Australians in Baghdad, London and Melbourne. He anticipated the introduction of

legislation to change visa and citizenship requirements and also referred to the need for cooperation with industry to improve cybersecurity.

Standing orders provide that when the House has granted a Minister leave to make a Ministerial statement, it is deemed to have granted leave for the Leader of the Opposition or a Member representing the Leader to respond, for an equal amount of time. Mr Shorten responded to Mr Turnbull, referring to the tragedies of the deaths and the need for unity in fighting terrorism. The Prime Minister's statement was referred to the Federation Chamber for further debate.

In recent years Ministerial statements have often been made early in the sitting day although the order of business in House standing orders provides for them after Question Time. Whatever the timing, leave of the House is necessary and this has been the case since 1901. As with so many aspects of House business, cooperation is necessary in the scheduling of Ministerial statements. The relevant Minister makes a copy of his or her speech available to the Opposition before the statement is made, ensuring that the Opposition is aware of the scope of the statement and likely speaking time. This may also assist in securing leave of the whole House for statements to be made.

### **Motion for approval of work**

In most sitting weeks, at some stage during government business time, a Minister moves on notice several motions referring proposed Commonwealth public works to the [Parliamentary Standing Committee on Public Works](#) for inquiry and report. The *Public Works Committee Act 1969* requires generally that proposed Commonwealth public works estimated to cost more than \$15 million be referred to the Committee. The Committee considers the purpose, need, and cost-effectiveness of proposed works and reports back to the House. If it recommends the works proceed, a Minister later moves, on notice, that it is expedient to carry out the proposed works.

On 14 June, the Minister for Small Business moved a number of motions for approval of proposed works that had been reported on by the Committee. Unusually, the Opposition opposed one motion for approval of the proposed fit-out of new leased premises for the Department of Immigration and Border Protection Headquarters Project. The Member for Makin, Mr Zappia, spoke to the motion indicating why Opposition members objected to the proposed expenditure. The Minister's motion to approve the work was carried on division.

### **Presiding Officers Statement to the Parliament—Statement by Speaker**

#### [Parliamentary Commission of Inquiry 1986—papers](#)

After the Acknowledgement of country and Prayers on 22 June the Speaker made a statement regarding the release of records of the 1986 Parliamentary Commission of Inquiry into whether certain conduct of the late Justice Lionel Murphy, a former Senator then a Judge of the High Court, amounted to 'proved misbehaviour' within the meaning of s. 72 of the Constitution. The *Parliamentary Commission of inquiry (Repeal) Act 1986* had divided the records into Class A documents (records relating to Justice Murphy's conduct) and Class B documents (all other Commonwealth records, including those regarding s.72). The Act prohibited access to the Class A documents for 30 years, after which the Presiding Officers were to determine any access to them. The Class B documents were available before then, with written approval of the Presiding Officers. In December 2016 the Presiding Officers authorised publication of the Class B records and they are available on the Parliament's website. The Speaker announced that he and the President have now decided to approve publication of the Class A documents and, following contact with affected parties, the Class A documents will be published on 24 July.

## Matter of public importance discussion—necessary support

On Tuesdays to Thursdays, after Question Time and the presentation of documents, standing orders allocate an hour for the House to discuss a topic proposed that day by a Member (usually a non-Government Member), and selected by the Speaker. On 15 June the Member who had proposed the topic for that day was not in the House when the Speaker sought the usual indication of support for the discussion to go ahead (by eight Members, including the proposer, standing in their places). So, the House went on immediately with government business instead.

## Interaction with the Senate

While occupants and observers of the House and Senate Chambers are well aware of the proceedings and decisions of ‘the other place’, courtesy of live online records and media coverage, communications between the two institutions are very formal. When either house has completed its work on a business item, a formal message is carried to the other house by the Serjeant-at-Arms (for the House) and Usher of the Black Rod (for the Senate). The message attaches the relevant document (usually a bill), informs the other house of its own decision and, if necessary, seeks the agreement of the other house. When the message is reported formally to the receiving house by the Chair, then that house can decide to consider the item immediately or, more usually, agree to it being considered later that day or on a later day, or it may be that the message is just providing information and no further action is needed. The new item is then integrated into the relevant part of the receiving house’s formal business agenda, the Notice Paper if necessary. The House’s online [Live Minutes](#) note in real time the reporting of messages and all House decisions, as do the House’s formal minutes, the [Votes and Proceedings](#). The Votes are available online the next business day.

During the fortnight there was a high volume of traffic between the houses, with messages usually accompanied by a bill and seeking the concurrence of the other house. This is typical of the end of a sitting period. The travel between the House and Senate of the Australian Education Amendment Bill 2017 was also reasonably typical of the end of a sitting period.

The next edition of House Review will be published after the sitting fortnight 8-17 August 2017.

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## Further information

- [Bills and legislation](#) for bills and explanatory memoranda, speeches, and tracking facility
- Live Minutes for a real time summary of House decisions and proceedings
- [Votes and Proceedings](#) for all the decisions of the House
- [House of Representatives Practice](#), 6 ed, 2012, the most authoritative guide to House procedure
- House of Representatives [Infosheets](#) for concise discussions of House operations and context
- House of Representatives [Standing Orders](#), September 2016, the House’s rules of procedure
- [Procedural Digest](#), for a more technical discussion of recent House procedural events