

# HOUSE REVIEW



## Selected features of House of Representatives business

Sitting period 4-7 December 2017 (no. 7)

This seventh issue focuses on the continuing impact of s.44(i) of the Constitution, including the House's resolution on a Citizenship Register; consideration of the Marriage Amendment (Definition and Religious Freedoms) Bill 2017; the Speaker's casting vote; and interaction with the Senate.

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### Change to meeting day

When the House last met on 26 October, at 5.00pm the Speaker stated 'The House stands adjourned until 10am on Monday 27 November'. On 20 November, the Leader of the House announced the House would next meet on 4 December, rather than 27 November. Later on 20 November the Speaker exercised his powers under the standing orders and informed all Members of the change. In accordance with practice, the Speaker only makes such changes on the recommendation of the government.

### Order of business—Monday 4 December 2017

#### *No committee and delegation and private Members' business selected*

On Mondays, after the Acknowledgement of Country, Prayers, and reports by the Petitions Committee, the House's order of business for the period 10.10am-12 noon provides for consideration of committee and delegation and private Members' business that has been selected earlier by the Selection Committee. On 25 October the Speaker had presented the Selection Committee's report of the items selected for 10.10am-12 noon on Monday 27 November. No committee and delegation or private Members' business items had been selected for 4 December. In the absence of private Members' business, the default is that the House transacts government business (which can also include House business).

#### *High Court and by-elections*

So first up on Monday, 4 December, after the presentation of petitions, the Clerk presented a copy of the Order of the Court of Disputed Returns regarding the Division of New England. This event flowed from the agreement by the House on 14 August to the Leader of the House's motion to refer questions regarding the Deputy Prime Minister, Mr Joyce, and s. 44(i) of the Constitution to the Court of Disputed Returns. On 27 October, the High Court, sitting as the Court of Disputed Returns, held unanimously that Mr Joyce had been incapable of sitting as a member of the House because he was a 'subject or a citizen...of a foreign power'. The Principal Registrar of the Court wrote to the Clerk that day to inform him of the Court's decisions on the questions referred. The Speaker issued a writ for a by-election for the Division of New England on 27 October.

On 4 December the Speaker informed the House of details of the issue of a writ for a new election for New England (that took place on 2 December). The Speaker also informed the House of the resignation of Mr Alexander from the House and details of the resulting by-election on 16 December for the Division of Bennelong. Although the High Court's decision regarding Mr Joyce (and several Senators) was highly publicised, as was Mr Alexander's resignation and decision to contest the by-election, this was the first opportunity for the House to be informed formally of the events.

## **New Member sworn**

On 6 December at midday, the Australian Electoral Commission officially declared the poll for the New England by-election. News reports stated that Mr Joyce was sworn in by the Governor-General as Deputy Prime Minister and Minister for Agriculture at 1.15pm. The Constitution provides (s.64) that Ministers are not to hold office for more than three months unless they become a Senator or Member.

At 2.00pm on 6 December the Speaker announced the return to the writ issued for the by-election in New England and the endorsement on the writ that Mr Joyce had been elected. The Speaker called for the new Member to be admitted. Mr Joyce was escorted in by the Prime Minister and the Member for Murray and made and signed the oath of allegiance before taking his place on the front bench.

## **Constitution, s. 44(i)—Citizenship Register and motions of referral**

### *Resolution of 4 December on a Citizenship Register*

On 4 December the Leader of the House moved, by leave, to establish a Citizenship Register and require all Members to make declarations of citizenship and provide details of relevant considerations and evidence (initially by 9am on 5 December) in the form required by the House Committee of Privileges and Members' Interests. The Committee was to determine procedures for the Registrar to maintain a Citizenship Register and publish the Register on the Parliament's website—similar to arrangements for the Register of Members' Interests. Failure to provide statements as required and the provision of false and misleading information may amount to a serious contempt. Finally, the motion provided that a Minister or the Manager of Opposition Business may move without notice to refer a Member to the Court of Disputed Returns. The motion was carried on the voices.

On the afternoon of 5 December the House's [Citizenship Register](#) was published. That evening the Member for Batman made a statement in the Federation Chamber regarding his citizenship status. On 6 December in Members' 90 second statements the Manager of Opposition Business indicated he would circulate the terms of a motion to refer a number of Members (comprising Opposition and Government Members and a cross-bench Member) to the Court of Disputed Returns. Later on 6 December, the Manager of Opposition Business moved to refer the circumstances of the Member for Batman and eight other Members to the Court of Disputed Returns, pursuant to s.376 of the *Commonwealth Electoral Act 1918*. The motion sought to refer four questions in respect of each Member: whether by reason of s.44(i) of the Constitution the place of the Member had become vacant; if yes, how the vacancy should be filled; what directions the Court should make to dispose of the reference; and what orders should be made as to costs.

After debate, including contributions from the Prime Minister and four members of the cross-bench, the question was put and the result was tied: 73:73. The Speaker exercised his casting vote with the 'noes', following the principle that if further debate is not possible, a decision should not be taken except by a majority (see the discussion below). The Manager of Opposition Business then moved that the Member for Batman's circumstances be referred to the Court of Disputed Returns, stating he did so at the request of the Member. This was carried on the voices. The next day the Speaker presented to the House a copy of his letter to the Principal Registrar of the High Court regarding the House's resolution referring the Member for Batman.

## **Speaker's casting vote**

The Constitution provides that questions in the House are to be decided by a majority of votes other than the Speaker's—the Speaker 'shall not vote unless the numbers are equal, and then he shall have a casting vote' (s.40). The provision for a casting vote also applies to Members who are deputising for or acting as Speaker (the Deputy Speaker, Second Deputy Speaker, or an Acting Speaker—not

members of the Speaker's panel unless they are acting as Speaker). Since 1901 the Speaker or Deputy Speaker have exercised a casting vote on 39 occasions. Over the years principles have been established that guide the exercise of the vote (following principles that have developed in the United Kingdom House of Commons): the Speaker should vote for further discussion, where possible; where no further discussion is possible, decisions should not be taken except by a majority; and a casting vote on an amendment to a bill should leave the bill in its existing form. House standing orders provide that any reasons given by the Speaker for exercising a casting vote will be entered in the Votes and Proceedings (the House's formal minutes of proceedings).

## Legislation

### *Marriage Amendment (Definition and Religious Freedoms) Bill 2017—Senate message and motion for the second reading*

On 4 December the Speaker reported a message from the Senate transmitting the Marriage Amendment (Definition and Religious Freedoms) Bill 2017 (Marriage Amendment bill) for the concurrence of the House. This report was in effect the presentation of the bill to the House and the first reading was then made by the Clerk (by reading the long title of the bill). The Member for Leichhardt presented a revised explanatory memorandum and moved that the bill be read a second time. This motion by a private Member meant that the bill was then characterised as a private Members' bill—and subject formally to scheduling by the Selection Committee. Following the Member's second reading speech, leave was granted by the House for the second reading debate to continue. The Member for Brisbane seconded the motion for the second reading. Further speeches on the second reading continued through the day and an amendment to the motion for the second reading was moved by the Member for Warringah during his speech.

On 5 December the Leader of the House successfully moved a suspension of standing orders, to enable the second reading debate on the bill to continue until midnight. The motion also provided for the bill to be considered in government business time until it was disposed of by the House. The second reading debate dominated government business time that day and the next. A further suspension of standing orders on 6 December enabled debate to continue that evening for several hours after the usual time of adjournment that evening. One hundred and twenty-five Members spoke on the second reading stage, taking more than 21 hours in total. During the debate Members expressed a range of views, including acknowledging the wishes of their electorates expressed during the postal survey, the impact of family and constituents' experiences, their own family and personal histories, as well as their perspectives on the merits or otherwise of a plebiscite. Throughout this debate and the following detail stage there were considerable numbers of spectators in the Chamber's galleries and, from time to time, Senators present in the Senators' Gallery.

### *Marriage Amendment (Definition and Religious Freedoms) Bill 2017—concluding stages*

After the Member for Leichhardt summed up the second reading debate on 7 December, the question was put on the second reading amendment proposed earlier in the week by the Member for Warringah and defeated on the voices. The question on the second reading was carried on the voices. After the bill was read a second time there was a lengthy consideration in detail stage, focused on groups of amendments mostly characterised as providing freedoms and protections. Detailed amendments were proposed by the Member for Melbourne and defeated on the voices. The Member for Deakin proposed 44 detailed amendments, together, and presented a supplementary explanatory memorandum explaining these and other proposed amendments to follow. These amendments were defeated 43:97. The Member for Canning's group of 11 amendments was defeated on division: 55:87. The Member for Mitchell's following amendments were defeated 59:87.

Debate on amendments then moved by the Treasurer was interrupted by the automatic interruption for Members' 90-second statements at 1.30. Question Time ended early and administrative arrangements customary for the last sitting day were made. The Manager of Opposition Business withdrew the

proposed topic for a Matter of Public Importance discussion that afternoon and so debate on the detail stage of the Marriage Amendment bill was resumed quickly. The Treasurer's proposed amendments were defeated 59:82. A group of amendments was then proposed by the Member for Mallee and subsequently defeated 52:86. He then moved another group of amendments that were defeated 60:85. The final set of amendments to the detail was proposed by the Member for Corangamite and defeated 63:79. The question 'that the bill be agreed to' was carried on the voices. When leave was granted for the Prime Minister to move the third reading immediately he spoke again, briefly, followed by the Leader of the Opposition. A division was called for on the third reading but as fewer than five Members voted 'no', the count was not completed and the Speaker declared the question carried.

### *Introductions*

On the evening of 7 December, following passage of the Marriage Amendment bill, the Prime Minister introduced four bills and moved they be read a second time: the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017; the Foreign Influence Transparency Scheme Bill 2017; the Foreign Influence Transparency Scheme (Charges Imposition) Bill 2017; and the Home Affairs and Integrity Agencies Legislation Amendment Bill 2017.

### *Consideration of bills in the Federation Chamber*

Debate on bills was progressed in the Federation Chamber and finalised in the House: the Therapeutic Goods Amendment (2017 Measures No. 1) Bill 2017; the Therapeutic Goods (Charges) Amendment Bill 2017 and the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2017.

## **Deaths of former Members, former Senators and a former Governor-General and the 50<sup>th</sup> anniversary of the disappearance of Prime Minister Holt**

On 4 December the Speaker informed the House of the deaths of a former Member, Mr Percival Clarence Millar AM, and former Senators, Jean Margaret Hearn and Stephen Patrick Hutchins. All Members stood in silence. The Prime Minister moved motions of condolence on the deaths of the Right Honourable Sir Ninian Martin Stephen KG AK GCMG GCVO KBE QC, former High Court Judge and Governor-General, and the Honourable Wallace Clyde Fife, a former Member and Minister. The Leader of the Opposition responded to each motion and all Members stood in silence for each. The motion on Mr Fife was referred to the Federation Chamber for further debate.

On 6 December the Speaker announced the impending 50<sup>th</sup> anniversary of the death of Prime Minister Harold Holt and welcomed members of his family to the Distinguished Visitors' Gallery. The Prime Minister, Leader of the Opposition, Member for Higgins and the Speaker made statements on indulgence about Mr Holt's death. The Chamber agreed to a motion by the Leader of the House that further statements on indulgence be made in the Federation Chamber; these took place the next day.

## **Interaction with the Senate**

The Senate sat in the weeks of 13 and 27 November and, as a consequence, there was a large number of messages to report to the House on 4 December. These included the Marriage Amendment (Definition and Religious Freedoms) Bill 2017, discussed under the heading of Legislation above, as well as a resolution agreed to by the Senate relating to New Zealand's offer to resettle some refugees, and seeking the concurrence of the House.

When the Senate's message on the New Zealand resolution was reported on 4 December, it was agreed that it be considered immediately. The Leader of the House moved that the resolution be disagreed to and the Member for Melbourne moved as an amendment that the resolution be agreed to. After debate, the House divided, with the result: Ayes 73, Noes 72: the amendment was carried. The Leader of the House then moved that the House divide again on the basis that the result was caused by

misadventure—two Members of the Government had accidentally missed the division. Following debate the Leader of the House successfully moved a closure of question: 74:73. The two Members who had missed the earlier division explained their absence. The question was then put on the motion that the House divide again, and was carried: 74:73. The House then divided again on the Member for Melbourne’s proposed amendment and it was defeated: 73:74. The question that the Senate resolution be disagreed to was agreed to on division: 74:73.

A message from the Senate was reported on 4 December returning the Fair Work Amendment (Repeal of 4 Yearly Reviews and Other Measures) Bill 2017 with amendments. After the Leader of the House moved that the amendments be considered at the next sitting, the Manager of Opposition Business moved as an amendment that they be considered immediately. The amendment was defeated 73:74, and the original motion was carried on the voices. The Notice Paper now lists consideration of the Senate’s amendments to this Bill under Government Business, Orders of the Day.

### **Final items of the final sitting day for 2017**

Final items on 7 December included motions by the Member for Small Business for approval of work and references of work to the Parliamentary Standing Committee on Public Works; agreement by the House to Senate amendments to a bill (reported on 6 December); presentation of a number of parliamentary committee reports; reporting of messages from the Senate; and valedictory remarks by the Leader of the House, Manager of Opposition Business and the Speaker. At 7.52 the Speaker announced the House stands adjourned until 5 February 2018 at 10 am.

The next issue of *House Review* will be published after the sitting period 5-15 February 2018.

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### **Further information**

- [Bills and legislation](#) for bills, explanatory memoranda, amendments, 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, available the next business day
- [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