

Government defeat in the House of Representatives on 12 February 2019



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On 12 February 2019 the House of Representatives considered amendments made by the Senate to the [Home Affairs Legislation Amendment \(Miscellaneous Measures\) Bill 2018](#) (the Home Affairs Bill). [The Government strongly opposed](#) the Senate amendments, which sought to give greater weight to medical opinion when determining whether a medical evacuation from a regional processing country should occur, and attempted to prevent them from being considered by the House. However, as the Senate amendments were supported by the Opposition and a number of crossbench members, [the Government unsuccessfully tried](#) to stop the House from considering them, with further amendments being decided following [negotiations between the Opposition and the House crossbench members](#). [The Senate then considered and agreed to the House's amendments](#) to the Senate's original amendments on the following day, 13 February 2019.

Since the resignation of former Prime Minister Malcolm Turnbull on 31 August 2018 and subsequent election of Dr Kerryyn Phelps, [the Government has not been able to command a majority](#) in the House of Representatives in its own right. In light of this, the Government and some crossbench senators had previously [delayed the passage of the amended Home Affairs Bill through the Senate](#) until after the House of Representatives had adjourned on the final sitting day of 2018.

[Media reports have noted the rarity](#) of a government being defeated in the House of Representatives on legislation—two examples being the [amendment, in 1929, of the Bruce Government's Maritime Industries Bill](#) by the House so as to delay its proclamation until after submission to the people at a referendum or general election; and [the amendment in 1941 of the estimates of expenditure by the House](#) to reduce the Fadden Government's budget by £1 (this was not a direct vote on a Bill, but due to [the House's financial legislation procedures at the time](#) the amendment amounted to a demonstration that the Fadden Government had lost control of public finances). In both cases the government considered the defeat to be an indication that it had [lost the confidence of the House](#): in 1929 the Governor-General accepted Prime Minister Bruce's advice to dissolve the House, while in 1941 the Fadden Government resigned. Given this

historical background, [there has been some discussion](#) of the effect of the loss and the capacity of the Morrison Government to retain the confidence of the House.

A matter of confidence

The withdrawal of confidence by the House may be shown in a number of ways, the most unequivocal of which is to pass an explicit motion of no confidence in the government. *House of Representatives Practice* [states](#) that there has never been a successful vote of this kind in the House of Representatives. However, governments have either resigned or recommended the dissolution of the House on eight occasions (the first being in 1904 and the most recent being in 1941) after being defeated in the House on other questions. These include legislative measures the government has declared to be of vital importance or has advised against (such as the events of 1929 and 1941), and matters not central to government policy but which the government has nevertheless accepted are questions of confidence. For example, the Reid Government resigned in 1905 following [an amendment to the Address in Reply](#); the Fisher Government resigned in 1909 following [the adjournment of debate on the Address in Reply](#); and in 1931 Prime Minister Scullin advised the Governor-General to dissolve the House after [the House was adjourned](#) against the wishes of the Government. In the absence of an explicit, successful motion of no confidence, the assessments of both the government and the rest of the House as to the significance of a particular defeat are, therefore, crucial factors in determining whether the government retains the confidence of the House.

The Morrison Government's stance towards its defeat on the Home Affairs Bill has been complex, [with the Prime Minister suggesting](#) that the amended Bill is significant in that it will 'weaken our borders' and that it is 'acceptable in absolutely no form', while [also stating that the Government's defeat cannot be construed](#) as a vote of no confidence and [reaffirming that the election would be held in May](#). It is clear that the Government does not consider its defeat on the Bill to amount to a vote of no confidence, and [several crossbench members in the House of Representatives have previously indicated](#) they are not looking to support no-confidence motions in the Government.

While the Government's defeat on the Home Affairs Bill did not amount to it losing the confidence of the House, its ability to control business in the House may be further tested. [The Opposition has indicated](#) that it will seek to include two additional sitting weeks in March to allow time to pass legislation in response to the [recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry](#). However, it is possible that the [Australian Labor Party may not attract the necessary crossbench support](#) for such a motion, with crossbench members Mr Wilkie and Ms McGowan expressing scepticism and Mr Katter suggesting he did not consider extra sitting days necessary provided the Government addresses certain other matters.

Legal complication

One notable complication to the Home Affairs Bill debate, temporarily at least, arose from the tabling of a letter from the Attorney-General to the Speaker referring to [advice from the Solicitor-General](#), which indicated the 'better legal view' was that the Senate's amendments would not comply with sections 53 and 56 of the *Australian Constitution*. Section 53 partly provides that the Senate 'may not amend any proposed law so as to increase any proposed charge or burden on the people', and section 56 relevantly provides that a 'proposed law for the appropriation of revenue or monies' shall not be passed unless accompanied by a message from the Governor-General recommending the purpose of the appropriation. The letter submitted that the House should not consider the Bill as amended by the Senate on the grounds that it would allow the Senate to

initiate expenditure of public revenue. However, [as one expert has noted](#), by seeking to characterise the Home Affairs Bill as a money Bill the Government also heightened the risk that, should the House decide to proceed to consider the Bill, its passage could be regarded as a loss of confidence. In any event the issue was obviated as the Labor Party proposed an amendment removing the potential difficulties raised by the Solicitor-General's advice.

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