



# Procedural Information Bulletin

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For the sitting period 25 November to 5 December 2019

## Senators

On 25 November 2019 Senator Jim Molan returned to the Senate as a senator for New South Wales, filling the vacancy caused by the resignation of Senator the Hon. Arthur Sinodinos. Valedictory remarks were made the following week pending the resignation of Senator Cory Bernardi as senator for South Australia. Retiring as an independent senator, his seat will return to the Liberal Party, the party he was recognised as representing at the 2016 election, as provided in section 15 of the Constitution.

## Legislation

The first government bills considered during the sittings were a pair of [customs](#) and [customs tariff](#) bills giving effect to bilateral trade agreements with Peru, Indonesia, and Hong Kong, China. Crossbench amendments to subject commencement to various conditions - reforming investor-State dispute provisions, labour market testing and, in one case, the entry into force of another agreement – were unsuccessful. The Senate also rejected an amendment requiring a Productivity Commission inquiry into the impact of trade agreements, and the bills passed unamended.

On 28 November the government's [Ensuring Integrity](#) bill, which dealt with the administration of registered organisations, failed to pass the Senate, to the apparent surprise of most participants in the debate. After extended hours on two nights to accommodate second reading speeches, the government successfully applied a time limit on the final stages of the bill. Government and crossbench amendments were made in the committee stage, however, the final committee stage question – that the amended bill be agreed to – was lost on an equally divided vote.

The government rushed a new iteration of the bill through the House the following week, incorporating those amendments. The new bill was reported in the Senate at the end of the sittings. Proceedings on the bills do not meet the terms of the “double dissolution” provision in section 57 of the Constitution. That section requires an interval of three months between the failure of the first bill to pass the Senate and the passage of a subsequent bill by the House. Moreover, although section 57 allows that the subsequent bill may incorporate “amendments which have been made, suggested, or agreed to by the Senate”, it is doubtful whether the amendments in this case meet that description, given that the Senate did not ultimately adopt them. The new bill will be on the Notice Paper for the first sittings in 2020.

On the final sitting day of 2018 the Senate made amendments to Home Affairs portfolio legislation to insert what have become known as the Medevac provisions, enacted despite the opposition of the government: see Bulletins [331](#) and [332](#). On the penultimate sitting day of 2019 the Senate passed [a bill to repeal those provisions](#). After debate earlier in the week, a time limit was applied when the Senate met on 4 December, with remaining stages required to be completed by 11am. The bill was passed without amendment, after a robust debate, 37 votes to 35.

Three further bills were considered under time limits on the final day, including the Australian Crime Commission Amendment ([Special Operations and Special Investigations](#)) Bill 2019. That bill passed with government and opposition support. In all, 21 government bills passed the Senate during the fortnight, most with broad support. Requests for amendments made in respect of two bills were pending at the end of the sittings. As a side note, debate on the Ensuring Integrity bill stretched to nearly 16 hours, including some 10 and a half hours of second reading speeches. This compares with the longest Senate debate in the previous parliament: 16 hours and 56 minutes on the [Human Rights Legislation Amendment Bill 2017](#).

## Considering bills under a limitation of debate

As has been mentioned before (see [Bulletin 331](#)), it is now rare for time limits for debating bills to be initiated by the method spelled out in [standing order 142, Limitation of debate on bills](#). Instead, senators propose what are sometimes called “time management” motions, which allocate time for debate and specify that the procedures in so 142 apply. This preserves some important rights, including the right to have the question put on all amendments circulated at least 2 hours before time expires, a prohibition on introducing any other amendments, and a prohibition on the use of closure (a motion that the question be now put; informally a “gag”) while the guillotine is in operation. Of course, senators may seek to vary these procedures.

For instance, on 4 December, debating the medical transfers bill under a time limit, the Leader of the Opposition in the Senate sought leave to move closure, so that the question would be put immediately on an amendment to defer the bill until documents outlining negotiations had been produced. When leave was denied, Senator Wong moved instead to suspend standing orders to allow closure. The motion was in order, as it was relevant to the matter before the chair (so 209(3)), but required an absolute majority to succeed (so 209(1)).

Similarly, because the time limit on that bill was imposed without notice less than an hour before it was due to expire, several Opposition amendments were circulated after the 2 hour deadline, but the Senate gave leave for one of those amendments to be put.

## Questions, documents and explanations

Three times during the sittings ministers were required to attend the Senate to table documents or explain the government’s response to orders for documents, with the opportunity for an hour long debate on the matter. These involved the overdue government response to the Select Committee on Charity Fundraising, documents relating to a phone call between the Prime Minister and the NSW Police Commissioner, and the government plans for the dairy industry.

Forty orders for documents have been made in the first 6 months of the 46th Parliament, with full or partial compliance to 23 of them. The cumulative list is online on the Senate’s [business pages](#).

## Disallowance

Notices for two motions proposing to disallow the Quality of Care (Minimising the Use of Restraints) Principles 2019 [[F2019L00511](#)] (see [Bulletin 338](#)) were withdrawn on 28 November, after the committees which had given them reported their satisfaction with amendments providing for a review after 12 months and an automatic repeal after 2 years.

## Procedural changes

On 3 December the Senate adopted the recommendation in the Procedure Committee's [third report of 2019](#) for a trial of changes to the routine of business. The dinner break on Monday evening will become an extra hour of debating time, undertaken on a “no divisions” basis, while the Senate will adjourn at 6pm on Thursdays; an hour earlier than the average time observed over recent years. The committee made that recommendation on the basis it would result in no loss of actual business time. The committee also proposed different arrangements for the consideration of committee reports and other documents on Thursdays.

More broadly, the committee proposed a trial of reduced speaking times, so that more senators may participate in the available time. General debate on second reading motions and the like will be reduced from 20 to 15 minutes, and contributions in committee of the whole will be reduced from 15 to 10 minutes, remembering that senators may make multiple contributions in committee.

The changes apply as a temporary order from the first sitting day next year until the end of the first sitting week in August 2020.

## Committee for the Scrutiny of Delegated Legislation

Following the tabling of the Regulations and Ordinances Committee's report on its inquiry into [Parliamentary Scrutiny of Delegated Legislation](#), the chair gave notice of her intention to move a motion to substitute new terms of reference for the committee, as recommended in the report: see [Bulletin 335](#). The motion was agreed to on 27 November, and the changes took effect from 4 December. The committee tabled a [Delegated Legislation Monitor](#) on the same day under its new name, the Senate Standing Committee for the Scrutiny of Delegated Legislation.

In summary, the [changes](#):

- modernise language and procedures;
- clarify the standing orders to reflect existing committee practice; and
- promote consistency with other Senate standing committees and scrutiny committees in comparable jurisdictions.

In addition to the changes directly related to the committee, standing order 25(2)(a) was amended to clarify that legislation committees may inquire into and report on delegated legislation made in the portfolios allocated to them. This is consistent with the interpretation of another element of standing order 25(2)(a), which allows legislation committees to inquire into the performance of government agencies.

## Privileges Committee

On 28 November the Privileges Committee presented its [178th report](#) on the development of a Foreign Influence Transparency Scheme for the Parliament: see [Bulletins 326](#) and [329](#). The committee had discussed the matter with its House counterpart on an earlier reference which lapsed with the 45th Parliament. The committee took the view that existing processes for registering interests and qualifications under ss 44 and 45 of the Constitution provided a ready vehicle for a parliamentary scheme, and also considered whether activities taken on behalf of a foreign principals might provide grounds for disqualification under s 44(i) for being under an “acknowledgement of allegiance, obedience, or adherence to a foreign power”.

The committee noted reported shortcomings in the administration of the executive scheme, and the complication of developing a scheme for members of the federal Parliament, given that the FIT scheme excludes their staff, as well as state and territory members of parliament. The committee will continue to monitor the executive scheme and revisit the matter, should an equivalent referral be made in the House.

## Inquiries

Three new Senate select committees were established during the fortnight on autism, on temporary migration and on foreign interference through social media.

A review of foreign investment proposals was referred to the Economics References Committee for report by September 2020. In addition, there were 17 referrals of bills or groups of bills to legislation committees on the recommendation, adopted by the Senate, of the Selection of Bills Committee.

The Senate passed an unusual motion on 25 November, calling for the government to introduce safeguards and support services for witnesses before the Joint Select Committee into the family law system.

Three further estimates hearings, continuing on from the recent supplementary budget estimates round, were held during the fortnight pursuant to [procedural order 9B](#).

## Overdue government responses

A Senate resolution requires government responses to committee reports to be provided within 3 months. The Senate agreed to two orders requiring the government to produce overdue government responses; one to the report of the Select Committee on Charity Fundraising in the 21<sup>st</sup> century and the other in relation to the report of the Education and Employment References Committee into the mental health of first responders.

## Reports tabled

In addition to two reports on bills by legislation committees, and interim reports by the Joint Standing Committee on the National Disability Insurance Scheme and the Environment and Communications References Committee looking into faunal extinction, the Rural and Regional Affairs and Transport References Committee tabled its report on the feasibility of a National Horse Traceability Register for all horses, and the Senate Select Committee on Jobs for the Future in Regional Areas concluded after tabling its report.

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## RELATED RESOURCES

[Dynamic Red](#) – updated continuously during the sitting day, the Dynamic Red displays the results of proceedings as they happen.

[Senate Daily Summary](#) – a convenient summary of each day's proceedings in the Senate, with links to source documents.

Like this bulletin, these documents can be found on the Senate website: [www.aph.gov.au/senate](http://www.aph.gov.au/senate)

Inquiries: **Clerk's Office (02) 6277 3364**