



Procedural Information Bulletin

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For the sitting period 24 to 27 February 2020 and additional estimates hearings 2 to 6 March 2020

Legislation

Since 2010, the Senate has dedicated time in its routine of business each week to the consideration of private senators' bills, which now occurs early in its Monday sittings. In its [Second report of 2011](#) the Procedure Committee recommended that bills should not be listed at this time unless they were "debate ready". This was regarded as including a requirement that bills had been through internal party processes enabling votes to be taken if required. Prior to bills being called on 24 February, statements were made reminding senators of this requirement.

Thirteen government bills were passed during the sitting week, one with amendments. Nothing of procedural significance occurred.

Accountability and orders for documents

Orders for documents during the week included another example of the Senate ordering the production of an overdue government response to a Senate committee report, this time the Education and Employment References Committee report on the mental health of first responders, emergency workers and volunteers. The order was made on 24 February and the response was produced the following day.

Another order was made on 25 February seeking the so-called "Gaetjens report" on ministerial standards and the administration of sports grants [[see Bulletin 340](#)]. It required the attendance of the Minister representing the Prime Minister the following day to explain the government's failure to produce the report, and allowed a further debate on the matter.

A continuing order was made on 27 February requiring that a list be published online each month, "in a machine readable format", showing the details of each Australian Research Council grant recommendation.

On 25 February a senator sought an explanation under standing order 164(3) for the government's failure to comply with an order of 14 November 2019 relating to New South Wales water access licences.

The cumulative list of orders and responses is available on the [Senate's business pages](#).

Finally, pursuant to the [Senate order of 7 December 2017](#), the government also tabled [the first 6-monthly report](#) for the current parliament on outstanding orders for documents. The order requires the government to state whether resistance to outstanding orders is maintained and why.

Inquiries and reports

Five bill inquiries were initiated in addition to two new references inquiries: one for the Legal and Constitutional References Committee on domestic violence; and the other for the Education and Employment References Committee following the demise of General Motors Holden in Australia. The terms of reference for the domestic violence inquiry focus the committee's attention on the extent to which recommendations made in earlier reports by parliamentary committees, and in a report by the Auditor-General in 2019, have been implemented.

A handful of reports were tabled during the week, including a substantial interim report by the Parliamentary Joint Committee on Corporations and Financial Services on the regulation of auditing in Australia. Reports were also tabled by each of the Senate legislation committees on annual reports allocated to them.

Directions to committees

There were two motions proposed in the Senate in relation to the estimates hearing programs of legislation committees. One motion proposed to direct the Community Affairs Legislation Committee to hear from Sports Australia from 9am on the first day of their hearings, but was ultimately withdrawn. The other notified officers from the newly created Department of Agriculture, Water and the Environment that they would be expected to answer questions about the Environment Restoration Fund and the Communities Environment Program.

In addition, the Senate agreed to a motion requiring the Naval Shipbuilding Advisory Board to appear before the Foreign Affairs, Defence and Trade Legislation Committee.

Additional estimates 2019-20

The estimates week commenced with a searching examination of various officers and ministers about issues associated with the administration of sports grants and concluded with the impact of the coronavirus across a range of portfolios.

The recent changes to the Administrative Orders, and the subsequent re-allocation of portfolios to standing committees, saw some rearrangement of the usual committee hearing programs. In addition, and in recognition of the challenges posed by coronavirus preparations, the Community Affairs Legislation Committee agreed that the Chief Medical Officer, who is also the new secretary of the Department of Health, should appear at the start of the day so that he could get on with his job of preparing Australia for a possible pandemic declaration. He returned later the same day to provide an update and answer more questions.

The Economics Legislation Committee similarly rearranged its program to permit Treasury officials to deal with the release of the national accounts, and also put questions to the Deputy Governor of the Reserve Bank of Australia.

Advice to government

Periodically it becomes necessary to remind 'ministers in the Senate, or officers' [[standing order 26\(5\)](#)] that incanting 'advice to government' does not provide a shield against providing information to Senate committees. This has been made clear on many occasions and is documented widely.

The Senate's order on [public interest immunity claims \(procedural order of continuing effect 10\)](#) prescribes a process for witnesses, including ministers, to raise public interest immunity claims over the provision of information to committees. Paragraph 7 of the order states that:

A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or the document is not a statement that meets the requirements of [the order].

The opening statement by chairs at estimates hearings reminds witnesses that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the Parliament and its committees unless the Parliament has expressly provided otherwise: [resolution 49](#). The opening statement also reiterates paragraph 7 above.

The above procedural order, resolution and opening statement, coupled with the Government's statement that its [Guidelines for official witnesses before parliamentary committees](#) exist to 'assist in the freest possible flow of information to the parliament', should be enough. However, the myth persists that 'advice to government' offers blanket protection, with one departmental secretary making the novel argument that advice to government must be secret otherwise the government may turn to other non-public sector sources for advice.

As Odgers notes, 'Governments have claimed that there is a long-established practice of not disclosing their advice, or of not doing so except in exceptional circumstances. These claims are contradicted by the occasions on which advice is voluntarily disclosed when it supports a government position' [14th ed., p 668].

A statement outlining the apprehended harm to the public interest must accompany each claim to withhold information. It is not enough to stick a label on information or a document and hope that will suffice.

Correcting the record

Questioning of Sports Australia officials in the Community Affairs Legislation Committee about evidence they had provided to the Select Committee on the Administration of Sports Grants underlined the importance of correcting the record as soon as possible, rather than at a time that is administratively convenient. At issue was a discrepancy in evidence given by Sports Australia and the Auditor-General. The questioning emphasised the need for officers to correct evidence expeditiously and that committees expect corrections to be made as soon as an error is discovered rather than some days later.

Matters considered

- Beyond sports grants and the coronavirus, the following matters were also considered:
- Bureau of Meteorology climate data observations
- Australian Honours and Awards
- the timing and scope of legislation to implement a Commonwealth Integrity Commission
- the mental health needs of people in bushfire affected regions
- arrangements for the storage of nuclear waste in Australia

- measures taken by Safe Work Australia to address occupational lung disease
- the Future Submarine Program
- Centrelink debt recovery processes known colloquially as ‘robodebt’.

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

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