



# Procedural Information Bulletin

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For the sitting period 15 to 24 June 2021

## Legislation

The [Transport Security Amendment \(Serious Crime\) Bill](#) passed with an opposition amendment after feisty debate on 15 and 16 June. The successful amendment provides for regular reviews of the amendments made by the bill. However, most of the debate concerned an ultimately unsuccessful opposition amendment to – in effect – split the bill, by making parts of it contingent on the passage of a [private senator's bill on maritime crew visas](#). That bill was debated on 21 June and remains on the Notice Paper.

The Senate passed three superannuation bills on 17 June, with their committee stages conducted under a guillotine (the first of three for the fortnight) after a late sitting the previous night for the second reading debate.

The committee stage on the first of those bills – promising [more flexible superannuation](#) arrangements – was unusual. Although several amendments had been circulated, none were initially moved. The committee therefore agreed to the bill (on the voices) without amendment, which is generally the trigger for the chair to put the question that the bill be reported to the Senate; the final stage of the committee process.

That question was defeated in a close division. Technically, the committee had completed the task referred to it by agreeing to the bill, so there was some doubt about the effect of the vote.

The standing orders provide little guidance here, chiefly because they provide for the consideration of bills in committee of the whole “clause-by-clause”; a method that has not been used in nearly three decades. Instead, bills are invariably considered “as a whole, by leave” so that amendments to any part of a bill may be considered together.

Presumably it would have been open to senators to amend the reporting motion to allow reconsideration of particular clauses under [standing order 120](#), which last occurred 30 years ago under the clause-by-clause method. There are also provisions allowing the recommittal of a bill at later stages – on the adoption of the report (so. 121) or at the third reading (so. 123) – so allowing the committee to report and then initiating a fresh committee stage would have been a procedurally-clear approach. This has also been effected – by leave – *after* the third reading, despite the prohibition in so. 122(4), to avoid decisions being made by misadventure: see Bulletins [177](#), [238](#) and [324](#).

Be that as it may, the defeat of the motion to report could only be rationally interpreted as an indication that the committee wished to consider the bill further: see [Odgers' Australian Senate Practice, 14th ed., p. 333](#). On that basis, the chair simply allowed debate on the bill to continue. The committee then spent an hour debating two amendments that were not, in fact, moved, before agreeing to four Pauline Hanson's One Nation amendments that had government support. The bill passed in that form.

The [Your Future, Your Super](#) bill had earlier been amended in the House to remove the regulation making power to prohibit a trustee of a registrable superannuation entity making certain payments or investments. Government amendments made in the Senate further constrained the regulation making power and delayed the effect of the single default account (“stapling”) provisions. The other superannuation bill passed without amendment.

A dozen bills, in seven packages, were passed under a guillotine on 22 June, including the Budget appropriation bills. The online safety bills also passed at this time, with successful amendments from the government and opposition subsequently agreed to by the House. The passage of a bill to establish the office of the Inspector-General of Water Compliance on 23 June was accompanied by vigorous debate, particularly around amendments proposed by the Nationals and supported by One Nation. The bill was passed with two government amendments, as well as two from One Nation that were subsequently rejected by the House. The Senate did not insist on them, as to which see more below.

Another guillotine on the last sitting day saw another four bills passed, three without the opportunity for debate in the Senate. One of those was the Telecommunications Legislation Amendment (International Production Orders) Bill 2020. Five hundred and two amendments had been made to that bill in the House of Representatives the previous evening, on the recommendation of the Parliamentary Joint Committee on Intelligence and Security. When bills are received toward the end of a sitting period, they are automatically adjourned to the next, unless exempted from the operation of [standing order 111](#). The government moved to exempt a handful of bills, including the telecommunications bill. The Australian Greens sought to exclude the bill, arguing that such extensive amendments should be subject to proper scrutiny. While the amendment was supported by other crossbench senators, government and opposition senators voted to allow the bill’s consideration.

The guillotine motion also provided for an unusual method of dealing with the message from the House rejecting two Senate amendments to the water bill. The method was modelled on proceedings used on the so-called medevac legislation: see [Bulletin 332](#). The motion required a single question to be proposed from the chair – that the Senate not insist on its amendments – and “put immediately”; a phrase routinely interpreted to mean a question is to be put without debate. After two senators made statements on the motion, by leave, the Australian Greens dissented from the President’s ruling that the question could not be debated. The Senate majority supported the ruling. While there is no dispute about the meaning of the phrase, use of the more familiar belt and braces formulation of “put immediately without amendment or debate” may have provided a useful procedural signpost.

In all, 34 government bills passed the Senate, eight with amendments.

## The same question rule

[Standing order 86](#) – the same question rule – is directed to maintaining the principle “that questions once having been finally disposed of shall not be raised again and again in the same Session”: see Laing, RG, [Annotated Standing Orders of the Australian Senate](#). As Odgers notes, the rule is seldom invoked:

Even if the terms of a motion are the same as one previously determined, because of an elapse of time it almost invariably has a different effect because of changed circumstances and therefore is not the same motion. There may also be different grounds for moving the same motion again.  
[14<sup>th</sup> ed., pp. 238–9]

Although rarely invoked, it follows that a chair called to consider the application of the rule may look to determine whether new facts or circumstances have arisen to justify the question being proposed again. This principle guided the President in relation to repeated motions proposing the first reading of the [Ministerial Suitability Commission of Inquiry Bill 2021](#).

The bill was introduced on 16 June by the Leader of the Australian Greens in the Senate, Senator Waters, and proposes to establish an inquiry into whether the Hon. Christian Porter, MP is a “fit and proper person to be a Minister of State”. The Senate agreed to the motion authorising the introduction of the bill, before voting it down at the first reading, 30 ayes to 33 noes. The rejection of bills at the first reading stage is exceedingly rare, having occurred in recent times only in relation to legislation that was widely viewed as obnoxious: see Bulletins [329](#) and [331](#).

Senator Waters gave notice the following day of another motion proposing the first reading, which was refused formality on 21 June. A suspension motion to allow it to be moved was also lost. When Senator Waters moved a further motion for the first reading on 22 June the President explained how he intended to apply the same question rule. He noted the changed circumstances – notably that the bill had been published since the question was first proposed – but indicated that, should the motion be negatived, further notices of motion for the first reading of the bill would not be entertained in the immediate future. The President ruled on 24 June that, as the motion had been considered on two recent occasions, in accordance with [standing order 86](#) it was not in order for the question to be proposed again. Senator Waters accepted the ruling, and sought unsuccessfully to suspend standing orders (including the same question rule) to allow the motion.

In response to a point of order the President also indicated that the rule against repeated requests to suspend standing order may apply to future motions of the kind employed here by Senator Waters.

There were also multiple unsuccessful attempts to refer the bill to a legislation committee: via the Selection of Bills process on 17 June; on a motion on notice on 21 June and on similar notices (with different reporting dates) on 22 and 23 June. On the last occasion, the President indicated to the Senate that, if the motion were negatived for what would be the third time, further motions the same in substance would not be entertained in the immediate future. For this purpose he noted that he would not regard a simple change to the reporting date as altering the substance of the motion. A subsequent notice from Senator Waters sought to refer the bill to a different committee.

From as early as 1904, the same question rule has not been strictly applied to bills. Odgers locates the rationale as preserving the operation of [section 57 of the Constitution](#): if a double dissolution may be triggered by repeated rejection of bills, then such questions must be able to be put more than once: [14<sup>th</sup> ed., p. 239](#). It is doubtful whether this rationale is compelling for bills introduced in the Senate, which cannot form the basis of a such a trigger, and motions moved without regard to the elapse of time built into that process.

The President also applied the same question rule in a different context on the last sitting day. As noted earlier, the Australian Greens unsuccessfully moved an amendment to remove a bill from an exemption motion. The President ruled that they could not also ask for the question to be divided in relation to that bill, because that procedure would replicate the effect of the lost amendment.

## Reference to Privileges Committee

On 15 June the Senate referred to the Privileges Committee allegations of improper interference with the Economics References Committee inquiry into Australia’s sovereign naval shipbuilding capacity. The allegations centre on the refusal of the government to provide the information sought by the committee, with the proponents of the reference contending that “the committee’s ability to progress the inquiry has been severely and deliberately impeded by the department”. Senator Patrick amended the motion referring the matter to remove a direct reference to the conduct of the Secretary of the Department, perhaps in deference to the Senate’s long-standing view about the unfairness of imposing a penalty on a public servant who acts on the directions of a minister”: see [Bulletin 354](#). All parties other than the government supported the reference.

## Unanswered questions

On 15 June Senator Patrick asked under [standing order 74\(5\)](#) why a question relating to Defence industry capability was a month overdue. He then took note of the minister’s response; in the words of the standing order, “the minister’s failure to provide either an answer or an explanation”. Senator Watt – having minutes before received an overdue answer to a question on a different matter – also spoke on the motion before the chair to debate the tardiness of answers more broadly, although his contribution ranged more widely than might have been considered strictly relevant.

## Orders for the production of documents

A number of orders for the production of documents were agreed to and subsequently complied with during the period.

During question time on 21 June, the Minister for Senior Australians and Aged Care Services undertook to provide information to the Senate on planning surrounding the rollout of COVID-19 vaccines. The information had been provided to state and territory leaders as part of a “National Cabinet” meeting earlier that day. A document was tabled that evening providing information on the vaccine roll-out without specifically referring to the information provided to National Cabinet. Leave was granted the following morning to debate an order for the production of the information. During debate, Senator Patrick discussed the nature of documents provided to National Cabinet and the government committed to provide as comprehensive a reply as it could. A document containing data provided to state health CEOs was tabled after question time on 23 June 2021 and a letter was tabled later in the day committing to table finalised data for the remainder of the year when available.

The latest draft of the Australian Animal Welfare Standards and Guidelines for Poultry was also tabled pursuant to an order agreed to on 22 June.

A cumulative list of orders and responses is online on the [Senate business page](#).

## Delegated legislation and disallowance

On 16 June the Senate adopted three recommendations from the Scrutiny of Delegated Legislation Committee’s report on [the exemption of delegated legislation from parliamentary oversight](#). The recommendations attempt to reverse the creeping expansion of this practice by emphasising the

importance of parliamentary – and particularly Senate – scrutiny; by seeking to constrain exemptions to matters where they may be warranted; and by expanding the committee’s remit to examine exempt documents. By adopting these recommendations, the Senate:

- agreed to a resolution emphasising the importance of disallowance and sunseting of delegated legislation to parliamentary scrutiny (recommendation 8);
- ordered the Attorney-General to table a statement setting out the rationale for specifying instruments as non-legislative, and for the exemptions from disallowance or sunseting in Parts 2, 4 and 5 of the Legislation (Exemptions and Other Matters) Regulation 2015 (recommendation 9, moved in a slightly amended form); and
- amended standing order 23 to clarify the committee’s scrutiny principles in relation to exemptions from sunseting and instruments that amend or modify the operation of primary legislation (Henry VIII clauses), and to allow the committee to scrutinise instruments that are exempt from disallowance (recommendation 10).

On 22 June the Senate disallowed the [Australian Renewable Energy Agency Amendment \(2020-21 Budget Programs\) Regulations 2021](#). Identical disallowance motions were called on together under the guillotine that day and were initially defeated. However, the matter was revisited by leave, in accordance with the Senate’s long-standing recognition that decisions should not be made by misadventure: see [Bulletin 316](#); Procedure Committee, [First report of 2017](#). The disallowance motions succeeded on a close vote, meaning the regulations immediately ceased to have effect. The regulations had earlier attracted the attention of the Delegated Legislation Committee, which was concerned that the regulations went beyond the remit of the Act under which they were made by seeking to “[expand] the jurisdiction of the ARENA from investing in renewable energy technologies to programs relating to energy efficiency and low-emissions technology”: see [Delegated Legislation Monitor 8 of 2021](#) and related correspondence.

## Formal motions

On 17 June the year-long trial of temporary orders limiting opportunities to raise formal motions (see [Bulletins 345](#), [346](#) and [352](#)) was extended into the next sittings, on the recommendation of the Procedure Committee, to enable consultation with senators about possible alternatives. Despite the extension, the government proposed replacement orders on 24 June, limiting the types of motions that may be dealt with as formal and introducing additional opportunities for senators to put their views on the record through short statements. As with the 2020 orders, the new arrangements were furiously opposed by much of the Senate crossbench, as was the manner in which they were introduced: at the end of the last sitting day as part of a guillotine motion allowing only 20 minutes of debate.

The new temporary orders, adopted with government and opposition support, have effect until the last sitting day of 2021. They add a 30 minute period of 2 minute statements to the Senate’s routine in the lead up to question time each day. The Government Leader, Senator Birmingham, indicated that the government would engage with senators about the allocation of these statements. The motion also made permanent the 2020 order restricting the length of general business notices, with exceptions.

## Inquiries

Eight bills were referred for inquiry and report as a result of the Selection of Bills Committee Reports [No. 6](#) and [No. 7 of 2021](#).

A second reading amendment to the [Water Legislation Amendment \(Inspector-General of Water Compliance and Other Measures\) Bill 2021](#) on 23 June has the effect of referring the Act, upon assent, to the Rural and Regional Affairs and Transport References Committee to inquire into potential further amendments to improve its operation, with the committee to table an interim report after 3 months and a final report after 6 months.

Two further matters were referred to references committees: [oil and gas exploration and production in the Beetaloo Basin](#) to the Environment and Communications References Committee; and [anti-money laundering and counter-terrorism](#) financing to the Legal and Constitutional Affairs References Committee

The Rural and Regional Affairs and Transport Legislation Committee also commenced an inquiry into meat category branding in Australia. The committee initiated the inquiry under [standing order 25\(2\)\(a\)\(v\)](#), which deals with the performance of the departments and agencies allocated to legislation committees, so its focus is the management by the Department of Agriculture, Water and the Environment of the relevant legislative and regulatory framework.

## Reports

Seven reports were tabled during the sitting period.

These included a [report](#) on Customs Amendment (Banning Goods Produced By Uyghur Forced Labour) Bill 2020 by the Foreign Affairs, Defence and Trade Legislation Committee, which made 14 recommendations, several focusing on tracing and prohibiting goods and products made with forced labour. The committee also confirmed a recommendation made earlier in the year in a References Committee report on [issues facing diaspora communities in Australia](#).

The Select Committee on Job Security also tabled a [first interim report](#) about on-demand platform work in Australia which made 15 recommendations, with a focus on improved data collection to better understand the impact of on-demand work and clarifying employment conditions for affected workers. The Committee also made a recommendation directed towards the [Joint Standing Committee on the National Disability Insurance Scheme](#) to consider the impact of platform-based work in the disability sector and on NDIS participants.

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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**