



# Procedural Information Bulletin

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For the sitting period 3 to 12 August 2021

## COVID-19 and the Senate

Around 25 senators participated in proceedings by video link after the President and Deputy President determined, under the [revised rules adopted in May](#), that the system should be available during the fortnight. Senators from different states attended subject to agreed conditions, including quarantine and testing requirements, and restrictions on their movements while in Canberra. Parliament House operated strictly in accordance with conditions agreed with ACT Health officers to protect occupants and the broader community.

A COVID case detected in the ACT on the last sitting day led to a local lockdown. Before rising, the Senate agreed to a resolution allowing the President, with the concurrence of the government and opposition, to alter the date and time of the next sitting day, should that be required. The resolution also allows the Procedure Committee to formulate rules for those sittings, should they be required, following the template of the motions moved at the onset of the pandemic: see Bulletins [342](#), [343](#).

## Statements, suspensions and debate

The temporary order adopted at the end of the June sittings operated during the sittings, adding a 30 minute period for 2 minute statements in the lead up to question time each day. This additional time was implemented as something of a trade-off for orders restricting the types of business that may be dealt with as formal: see Bulletin [356](#).

On several occasions during the sittings, senators sought to suspend standing orders to move motions that might otherwise have been dealt with as formal. On one occasion, the chair reminded senators that debate on a suspension motion should mainly address why the suspension is necessary; there is limited latitude during that procedural debate to address the substantive motion the suspension is intended to facilitate.

An opposition suspension motion on climate change was debated on 10 August, when a government motion to close the debate was lost on an equally divided vote. The Senate followed its usual approach of allowing the vote to be put again, after the duty whip identified that there had been an error in pairing arrangements. The President allowed a second suspension motion on the same topic to be moved by the Australian Greens, exercising his discretion to do so: see [Odggers' Australian Senate Practice](#), p. 222 at footnote 58.

On 12 August the government moved, by leave, to facilitate a 30-minute debate on a notice of motion lodged by the opposition about COVID-19 misinformation.

## Closing the Gap

The sitting of the Senate on 5 August was delayed to allow senators to attend the House of Representatives to hear the Prime Minister's annual Closing the Gap statement, addressing the inequality experienced by Aboriginal and Torres Strait Islander people. Procedurally, this involved a variation to the usual arrangements, whereby the Senate automatically suspends to enable senators to attend. The statement was tabled in the Senate later that day, together with the new [Commonwealth Implementation Plan](#), and these were debated in the Senate on 11 August.

## Legislation

In all, 11 government bills passed the Senate, three with amendments.

Among these was the [COVID-19 Economic Response No. 2 Bill](#), which allows the Treasurer to make rules allowing payments to entities affected by public health restrictions and makes those and other support payments tax-free. The bill was initially passed with a crossbench amendment requiring the Commissioner of Taxation to publish information about certain entities in receipt of JobKeeper and other economic response payments. The House of Representatives did not accept the amendment, and the Senate did not insist upon it when the disagreement was reported on 9 August.

Another [Treasury Laws bill](#) also passed with government amendments, including an amendment promising a review of the changes it made and a sunset should the review not proceed. Senator Patrick also sought to amend the bill to require large proprietary companies to provide financial reports to ASIC by repealing a grandfathered exemption. The amendment has twice found majority support when proposed in relation to other bills, but each time the Senate had resolved not to insist after the House disagreed: see Bulletins [345](#), [346](#). On this occasion, the amendment was lost on an equally-divided vote.

A family assistance bill [increasing child care subsidies](#) passed with government amendments and a request for an amendment, directed to fixing a drafting error in the bill. The error meant that the amount of subsidy calculated for some recipients would be lower than intended. Fixing the error increased the expenditure required to fund the measure. The Senate has long accepted that such amendments should be framed as requests.

A private senator's bill – proposing transparency measures around the [waiver of debt and act of grace payments](#) – also passed the Senate. The government opposed the bill at its second and third reading stages, so it is unlikely to pass the House of Representatives.

## Orders for documents and public interest immunity

Eleven orders for the production of documents were agreed during the sittings. One order agreed to, and complied with, required the government to table a response to a 2020 report of the Joint Standing Committee of Foreign Affairs, Defence and Trade Committee which recommended the introduction of targeted sanctions regime for human rights abuses and corruption (similar to those provided for under the United States' Magnitsky Act 2012). The government agreed to pursue changes to the existing autonomous sanctions legislation to allow the Minister for Foreign Affairs to impose sanctions on individuals and entities in response to serious human rights violations or serious corruption.

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

The Community Affairs References Committee tabled a [fourth interim report](#) in its inquiry into Centrelink’s income compliance program, again rejecting claims that information relating to the program ought be withheld on public interest grounds. The committee in particular rejected claims made against the provision of legal advice, given that the relevant legal matters have now been finalised. The report recommended that the Minister for Government Services table the information or attend the Senate to explain why it should not be provided. The Senate adopted the committee’s recommendation when the report was tabled on 12 August.

The Chair of the COVID-19 Select Committee, Senator Gallagher, also indicated in the media that the committee was likely to revisit government claims made on the grounds of the confidentiality of cabinet deliberations. This was prompted by the decision in an Administrative Appeals Tribunal matter raised by Senator Patrick, which held that the “National Cabinet” was not a committee of the (Federal) Cabinet for the purposes of the Freedom of Information Act. While, technically, neither the AAT decision nor the statutory FOI framework has any bearing on the Senate’s determination of public interest immunity claims, it would be untenable to suggest that the Senate’s information-gathering powers are inferior to those available under FOI: see also Odgers, Chapter 19, under [Potentially unacceptable grounds—Freedom of information issues](#).

## Delegated legislation and disallowance

An equally divided vote in the Senate is lost (section 23 of the Constitution), so provisions in a bill that do not have majority support do not pass. However, where similar measures are contained in regulations or other instruments, an equally divided vote is not sufficient to disallow them: the vote on the disallowance does not pass and the measures survive. This conundrum sits at the heart of the [guidance of the Scrutiny of Bills Committee](#) on “inappropriate delegation of legislative power”, which recommends that significant matters should “generally be included in primary legislation, which is subject to a greater level of parliamentary oversight” than executive-made legislative instruments.

There were two such examples in the Senate during the fortnight.

On 22 June the Senate had disallowed the [Australian Renewable Energy Agency Amendment \(2020-21 Budget Programs\) Regulations 2021](#): see [Bulletin 356](#). A [new version of the regulations](#) – with a different name and some variations in substance – was tabled on 3 August. Three notices were given on the same day, each proposing to disallow section 7 of the regulation, which prescribes a new function for ARENA to finance “priority low emissions technologies” as announced in the 2020-21 Budget. The first disallowance motion was defeated the following day on an equally divided vote, while the other notices are listed for consideration in October.

Similarly, [an instrument prescribing a class of persons as “compulsory participants”](#) in the [ParentsNext “pre-employment program”](#) also survived disallowance on an equally divided vote on 11 August. The consideration of that disallowance motion involved a confluence of several procedural elements. On 5 August, the Human Rights Committee gave notice of its intention to withdraw the motion to disallow the instrument, which it had lodged in May. Senator Dodson took over the motion and also gave notice of his intention to amend it (to disallow only part of the instrument). The amendment duly took effect on the next sitting day, 9 August, and no other senator advised that they wished to take over the motion in relation to the remaining part of the instrument. It was this amended motion that was the subject of the negated vote on 11 August.

## Inquiries

Three bills were referred for inquiry and report as a result of the Selection of Bills Committee Report [No. 8](#). No bills were referred as a result of Report [No. 9](#) during the second sitting week.

Three references inquiries were initiated in the Senate: [administration and expenditure of funding under the Urban Congestion Fund](#) to the Finance and Public Administration References Committee, the [provision of general practitioner and related primary health services to outer metropolitan, rural, and regional Australians](#) to the Community Affairs References Committee, and the [Australian manufacturing industry](#) to the Economics References Committee.

The Joint Committee on the Australian Commission for Law Enforcement Integrity (ACLEI) commenced an [inquiry](#) into the expansion of ACLEI's jurisdiction and the corruption vulnerabilities of law enforcement agencies' contracted services.

## Reports tabled

Six reports were tabled during the sitting period, among them a [report](#) on the Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021 from the Education and Employment Legislation Committee.

A [report](#) on the management of the inland rail project was tabled by the Rural and Regional Affairs and Transport References Committee. The report included 26 recommendations, the first of which was directed at the Rural and Regional Affairs and Transport Legislation Committee, recommending that the committee self-refer an ongoing inquiry for oversight of the inland rail project (under standing order 25(2)(a)(v)). A number of recommendations were focused on improving the management of costs associated with the project, with the committee finding that the initial business case was inadequate and that the project was significantly over budget.

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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**