



Procedural Information Bulletin

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For the sitting period 23 August to 2 September 2021

Senate and senators

On 30 August, the President informed the Senate of the death the previous night of Senator Alex Gallacher, a senator for South Australia since 2010, former chair of the Economics and Foreign Affairs, Defence and Trade references committees, and long-serving member of the Rural and Regional Affairs and Transport committees. The Senate adjourned as a mark of respect, with a condolence motion to occur at a later date.

On 25 August, valedictory statements were made by and in respect of Senator Siewert, a senator for Western Australia since 2005, Australian Greens Whip throughout her 16 years in the Senate, and long-serving Chair of the Community Affairs References Committee. Senator Siewert resigned her place on 6 September.

The Parliament sat while the ACT joined NSW and Victoria in lockdown, under their respective public health orders. The rules allowing senators to participate in Senate proceedings by video link continued to apply during the fortnight, and additional measures were adopted to ensure COVID-safe sittings. Before adjourning, the Senate agreed to a resolution enabling the President to alter the time and date of its next meeting, if required, and again empowering the Procedure Committee to vary the rules for the next sitting: see [Bulletin 357](#).

Orders for documents and public interest immunity

One of the major roles of the Senate is to hold the executive government to account, including through its power to require the production of documents. In doing so, the Senate has long taken the view that there is no category of documents that is immune from production and insists that it is for the Senate (and not the government) to determine claims to withhold documents in the public interest. In other words, witnesses do not have an independent discretion to withhold information. A series of resolutions beginning in 1975 emphasise this, including the [order of continuing effect of 13 May 2009 relating to public interest immunity claims](#). That order provides that claims to withhold information or documents may only be raised on public interest grounds and must be supported by a statement specifying the harm to the public interest that could result from the disclosure of the information.

The process established by the 2009 resolution has been explained as:

...a means to balance competing public interest claims by government on the one hand, that certain information should not be disclosed because disclosure would harm the public interest in some way, and by parliament's claim, as a representative body in a democratic polity, to know particular things about government administration, so that the parliament can perform its proper function of scrutinising and ensuring accountability for expenditure and

administration of government programs. [Evidence by former Clerk of the Senate, Dr Rosemary Laing, to the Legal and Constitutional Affairs References Committee—Report—[A claim of public interest immunity raised over documents](#), March 2014, paragraph 2.10.]

Where such claims are made, a committee may explore whether the provision of the information in a different form, or *in camera*, may satisfy its requirements. This allows negotiation on the scope of any request and is intended to ensure that committees have enough information to determine where the public interest in a particular matter lies. The Senate has not delegated to committees the power to enforce compliance. If a committee concludes that a claim does not justify the withholding of the information sought, the 2009 order requires the committee to report the matter to the Senate. Often the purpose of such a report is to provide the basis for the Senate to consider whether to order the production of the information.

This background is provided to give context to a long-running dispute between the Senate and the government over information relating to Centrelink's Income Compliance Program. The information – principally relating to legal advice – has been sought in the Community Affairs References Committee inquiry into the program and in the Senate: see Bulletins [340](#), [346](#), [347](#) and [357](#). In its [fourth interim report](#) the committee explicitly rejected the public interest immunity claims made by the Minister for Government Services (paragraph 1.2) – noting that they simply reiterated claims made by the former minister and explicitly rejected in the committee's [first](#) and [third](#) interim reports – maintaining that “it is ultimately in the public interest for the Commonwealth Government to be transparent about the advice it received in relation to the income compliance program” (paragraph 1.17). The committee also noted that the Senate has “rejected government claims that there is a long standing practice of not disclosing privileged legal advice” (paragraph 1.19) and concluded that any possible harm from disclosing the information sought “would almost certainly be mitigated by providing it to the committee *in camera*” (paragraph 1.23).

The committee recommended that the Senate adopt an order requiring the Minister for Government Services to produce the information or attend the Senate to explain her failure to do so, which the Senate duly adopted on 12 August. In a written response tabled on 24 August and in a statement to the Senate the following day the minister did little more than repeat the public interest immunity claims rejected by the committee and by the Senate on multiple occasions. Despite all of these exchanges the committee is no closer to receiving the information it has declared essential to its inquiry, and continues to argue that the government has not made out its public interest claims. While government members of the committee continue to put forward the view that the minister's claims are valid, the non-government majority have indicated their intent to continue to pursue the information. In one of her last contributions to the Senate before her retirement, the then chair of the committee said:

I hope this place will continue to try and hold this government to account, to get access to this information, information that the Australians affected by this deserve to know. I urge the government to reconsider and not just—with all due respect—cut and paste, yet again, their excuses for not presenting the information that the committee is after.

This pattern of the government repeating claims already rejected by the Senate has been seen in relation to several other orders for documents during the course of the Parliament. A variation on this theme was seen in responses to orders requiring the publication of information about JobKeeper payments. On 4 August the Senate ordered the Commissioner of Taxation to produce information about the receipt of JobKeeper payments by entities with an annual turnover of over \$10m. The Commissioner refused to comply, raising the confidentiality of taxpayer information as a public interest immunity (PII) claim. On 23 August the Senate explicitly rejected that claim and ordered the Commissioner “to comply fully with the order”. On 26 August the Treasurer made a purported PII claim

on essentially the same grounds, arguing that disclosure of the information would undermine taxpayers' confidence in, and compliance with, the tax system. On one level this is curious: tax law prevents the disclosure of this information to the Treasurer, which is presumably why the order was directed at the Commissioner. At the same time, Senate practice recognises that genuinely independent statutory officers ought make their own PII claims: see *Odgers' Australian Senate Practice*, Chapter 19, under [Statutory authorities and public interest immunity](#). On the other hand, it might be expected that the Treasurer would seek to make the government's argument in relation to confidence in the tax system for which he is responsible. Meanwhile, the Commissioner declared himself to be in an "unprecedented situation" and declined to take any further action until the Senate had determined the Treasurer's claim.

On 29 August, Senator Patrick wrote to the President raising a matter of privilege, proposing that the Tax Commissioner's refusal to comply be investigated as a possible contempt. This echoed the approach taken in a dispute over documents withheld from the Economics References Committee, which was referred to the Privileges Committee in June: see Bulletins [354](#) and [356](#). The President granted the matter precedence in debate but also noted in a statement to the Senate on 1 September that there were other avenues by which the information might be sought, and that it was a matter for the Senate which approach, if any, it would adopt. Senator Patrick's proposed reference to the Privileges Committee is set down for debate on 18 October. In the meantime, the original "JobKeeper transparency" amendments proposed in early August (see [Bulletin 357](#)) were revisited: see under *Legislation*, below.

There were numerous other orders for documents made during the sittings, including in relation to:

- the Urban Congestion Fund, which subsumes the administration of commuter car park projects (agreed 23 August)
- Australian Research Council funding schemes (24 August, complied with 26 August)
- the Beetaloo Cooperative Drilling program (24 August, not yet complied with)
- an Energy Security Board market design report (26 August, complied with 31 August) and
- COVID-19 vaccination rates (two orders made on 31 August, partially complied with 1 September).

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

Legislation

Another private senator's bill passed the Senate on 23 August, the sixth for this parliament. The bill, which seeks to ban the importation of goods produced by forced labour, passed with crossbench and opposition support. While government senators welcomed the policy in principle they did not support the bill, which does not bode well for its passage through the House.

Some 21 government bills also passed during the fortnight, five with amendments.

On 25 August the Senate agreed to the Royal Commissions Amendment (Protection of Information) Bill 2021, a government bill whose purpose aligns with Senator Steele-John's private senator's bill, passed by the Senate on 15 February 2021: see [Bulletin 352](#). Three electoral amendment bills were passed by the House on 25 August and by the Senate, under a guillotine, the following day. A foreign intelligence amendment bill introduced in the House on 25 August was also passed by the Senate under the same guillotine. On 31 August the Senate also passed a bill to implement some of the recommendations of the Human Rights Commission's 2020 Respect@Work report, with a government amendment. The Opposition and Australian Greens proposed numerous amendments, including many intended to

implement other recommendations in the report, however, none of these were successful. Finally, a fairly friendly time management motion – agreed to without demur – also saw a handful of government bills passed on 2 September.

The so-called JobKeeper transparency amendments originally proposed by Senator Patrick to a COVID economic response bill (see [Bulletin 357](#)) were circulated in respect of a Treasury Laws amendment bill, but did not find support when that bill was passed on 2 September. During debate on the COVID response bill these amendments initially had the support of all non-government senators but the Opposition agreed not to insist on them, over concerns about delaying the financial support measures contained in that bill. On this occasion, Pauline Hanson's One Nation senators decided not to support the amendments, proposing alternatives of their own. While these found support around the chamber, the proponents of the earlier amendments suggested that they would provide limited additional transparency.

Disallowance

On 26 May 2021, 21 instruments made under the *Charter of the United Nations Act 1945* and associated regulations on various dates since 2001 were registered on the Federal Register of Legislation for the first time. The instruments list hundreds of individuals and entities as being subject to United Nations counter-terrorism sanctions; however, because they had not been registered for up to 20 years questions arose as to their enforceability prior to their registration. A bill to put the enforceability of the instruments, and the validity of actions taken under them, beyond doubt was introduced into the House on 11 August; passing the Senate on 2 September under the time management motion referred to above.

The instruments were initially registered as not being subject to disallowance, attracting commentary from the Parliamentary Joint Committee on Human Rights ([Scrutiny Report 8 of 2021](#)) and the Scrutiny of Delegated Legislation Committee (see [committee correspondence](#)). The Minister for Foreign Affairs subsequently confirmed that the instruments were in fact disallowable. On 24 August, the Chair of the Delegated Legislation Committee gave notice of motions to disallow the instruments to give the committee further time to seek advice from the minister about the circumstances surrounding the significant delay to their registration and related technical scrutiny matters. Presumably, the committee will further report on the instruments once it has had time to consider any additional advice from the minister.

Inquiries

Thirteen bill inquiries were referred as a result of reports [no. 10](#) and [no. 11](#) of the Selection of Bills Committee. [Australia's military, diplomatic and development engagement in Afghanistan](#) was referred to the [Foreign Affairs, Defence and Trade References Committee](#).

The Community Affairs Legislation Committee held a budget estimates spill over hearing on 3 September, taking evidence from a number of agencies, including the Department of Health, Department of Social Services, Services Australia and the National Disability Insurance Agency.

Reports

Seventeen reports were tabled during the sitting period. These included two bill reports, reports on Annual Reports from each of the eight legislation committees, and two reports by the Parliamentary Joint Committee on Law Enforcement: [examination of the Australian Federal Police annual report 2019-20](#) and an interim report on [vaccine related fraud and security risk](#).

The Parliamentary Joint Committee on Corporations and Financial Services tabled a [report](#) on the 2019-20 annual reports of bodies established under the ASIC Act. Under section 243(b) of the [Australian Securities and Investments Commission Act 2001](#) the committee is required to examine each annual report prepared by a body established by the ASIC Act and tabled in either House of Parliament. These bodies include the Australian Securities and Investments Commission and the Takeovers Panel.

The Environment and Communications References Committee tabled an [interim report on oil and gas exploration and production in the Beetaloo Basin](#). The Economics References Committee [report on foreign investment proposals](#) made three recommendations, including that regulators have the power to enforce undertakings made as part of a foreign investment application.

The [report of the Select Committee on Temporary Migration](#) made 40 recommendations, including that the Australian Government adopt a national labour hire licensing scheme and that improved data on the number of workers on temporary visas and their employers be made public, as well as a number of measures designed to increase the role of the Fair Work Ombudsman in reducing exploitation of temporary workers.

The Rural and Regional Affairs and Transport References Committee tabled a [report on the importance of a viable, safe, sustainable and efficient road transport industry](#), making ten recommendations, including that the Australian Government adopt a suite of measures designed to improve national road infrastructure and driver facilities, and that a dedicated Minister for Transport be appointed.

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

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