



Procedural Information Bulletin

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For the sitting period 18 to 21 October 2021 and
supplementary Budget estimates hearings 25 to 29 October 2021

Senate and senators

The President of the Senate, Senator the Hon. Scott Ryan, resigned that office and his seat as a senator for Victoria by writing to the Governor-General under section 17 of the Constitution on 13 October 2021. The Governor-General notified the Governor of Victoria of the vacancy. His Excellency then attended the Senate on 18 October to swear in senators for South Australia – Senator Karen Grogan, chosen to replace the late Senator Alex Gallacher – and Western Australia – Senator Dorinda Cox, chosen to replace Senator Rachel Siewert, whose impending retirement was noted in the previous Bulletin.

After the Governor-General departed, the Senate chose a new President by secret ballot, with Western Australian Senator the Hon. Slade Brockman elected to the office in accordance with standing orders 6 and 7.

Senators Cox and Grogan made their first speeches on 19 and 20 October, respectively.

The Senate again sat with the ACT under public health directions, although the strict lockdown restrictions of previous months had begun to ease. The rules allowing senators to participate in Senate proceedings by video link were again adopted, by leave. Estimates hearings in the week of 25 October proceeded under COVID-safe protocols developed on the basis of expert health advice, promulgated to departments and agencies in the now usual way.

Privileges Committee reference

On 19 October the Senate agreed to a matter of privilege raised by Senator Patrick relating to the refusal of the Tax Commissioner to comply with a Senate order to produce information about JobKeeper payments: see [Bulletin 358](#). The Commissioner's refusal to comply will be investigated by the Privileges Committee as a possible contempt. This committee is still investigating another possible contempt in a dispute over documents withheld from the Economics References Committee, referred in June: see Bulletins [354](#) and [356](#).

Independent Parliamentary Workplace Complaints mechanism

In July 2021 the government published the report of its [Review of the Parliamentary Workplace: Responding to Serious Incidents](#). In moving to implement some of the recommendations of the review, the Senate adopted a resolution on 19 October recognising the duties and responsibilities of senators and their staff, including their obligations to comply with applicable work health and safety laws, and noting the establishment of the Parliamentary Workplace Support Service, which provides for an independent complaints mechanism for serious incidents in a parliamentary workplace, to be overseen

by the Parliamentary Service Commissioner. The service was established in September under [a determination](#) made by the then Presiding Officers.

The resolution provides an avenue for the Privileges Committee to receive and consider reports from the commissioner finding that a senator has not cooperated with a review under the complaints mechanism or acted on its recommendations. The resolution explicitly provides that a senator who fails to comply with the committee's recommendations may be found guilty of a serious contempt.

Legislation

Some five government bills were passed during the sitting week, however one – the [Migration Amendment \(Strengthening the Character Test\) Bill 2019](#) – was defeated on an equally-divided vote on 20 October. A previous iteration of the bill lapsed at the end of the previous parliament, and the 2019 version had languished on the Senate *Notice Paper* since September 2019. Media reports at the time suggested it did not have sufficient support to pass the Senate and that evidently remained the case, despite the circulation of several amendments from parties around the chamber.

Proposals to suspend standing orders

On three consecutive sitting days, Australian Greens senators sought to suspend standing orders before government business was called on to give precedence to debate on motions about climate change and the need to set ambitious targets to reduce carbon emissions. The suspension motions were unsuccessful, despite Opposition support for bringing on the debate.

On 21 October, the Opposition successfully suspended standing orders as the first step in an attempt to vary Senate business to require the government to explain its failure to comply with an order to produce modelling about the Government's 2050 net zero emissions reduction strategy. However, debate on a subsequent procedural motion was interrupted without resolution at 12.15 – colloquially a 'hard-marker' in the standing orders – requiring the Senate to move to other business. Later in the day the government relented, allowing the necessary variation to be moved by leave. The minister duly gave his explanation, and a short debate ensued.

Unanswered questions

Twice during the sitting week senators took the opportunity to ask ministers to explain why questions on notice and estimates questions had not been answered within the timeframes specified in standing order 74(5). On 18 October the Deputy President reiterated her ruling of 16 March 2021 that senators may, at the request of other senators, use those procedures in relation to questions those other senators have asked.

Disallowance

On 22 June the Senate disallowed the [Australian Renewable Energy Agency Amendment \(2020-21 Budget Programs\) Regulations 2021](#): see [Bulletin 356](#). A proposal to disallow section 7 of [a subsequent version of the ARENA regulations](#) was defeated on an equally divided vote on 4 August: see [Bulletin 357](#). The same fate befell two identical motions, taken together on 18 October 2021. It is well established that the same question rule does not apply to identical disallowance motions moved on different days: see *Odgers' Australian Senate Practice*, 14th ed., p.449. A further notice to disallow the ARENA regulations in full, given by the Chair of the Scrutiny of Delegated Legislation Committee, remains unresolved: see [Delegated Legislation Monitor 14 of 2021](#). The committee has particularly expressed its concerns about the compliance of the instrument with its authorising legislation and has

recommended the regulations be disallowed. This appears to go further than the committee's usual approach of issuing a 'protective notice' to provide more time to engage with the minister.

A motion to disallow the Migration Amendment (Merits Review) Regulations was also defeated on an equally divided vote on 19 October.

Temporary orders limiting formal business

There were several notices of motion given during the sitting week proposing orders for the production of documents, a couple of which had to be amended to comply with temporary orders about formal business: see [Bulletin 356](#).

The explanation for this is in standing order 66(5), adopted as a temporary order in June 2021, which restricts (by reference to their content) the types of general business notices that may be dealt with as formal. General business notices containing 'other' content may *not* be dealt with as formal.

For instance, standing order 66(5)(d) states that a notice "proposing an order for the production of documents (including proposing further action in relation to an order for production of documents)" may be dealt with as formal. However, commentary on the broader topic of the order falls outside of the scope of standing order 66(5). If a senator wishes to propose that an order for the production of documents be dealt with as formal business, its terms should go only as far as is strictly necessary to identify the documents to be produced, or the procedural history of the order on which further action is sought.

This adds a new aspect to the question whether a notice contains "extraneous material", which is dealt with by the amended text of standing order 76(8). The President has the power under that standing order to "delete extraneous matter from notices [or] require a senator to reframe a notice". The amended standing order provides that the President may use that power "to ensure that motions...are eligible for consideration as formal business".

To give some examples, one notice started life with a series of points describing aspects of modelling informing the public debate around emissions reduction. Only the last paragraph addressed the requirement that specific modelling be laid on the table. The earlier, discursive material was required to be reframed to ensure the notice could be dealt with as formal business. Similarly, a notice for an OPD circulated with an opening sentence noting the importance of high standards of governance was eventually reframed to remove that reference, leaving only the paragraphs that identified the documents to be produced.

By contrast, a notice relating to an overdue government response to a committee report on the administration of sports grants was not required to be reframed. It contained two short clauses setting out earlier obligations on the government to provide the response before proposing that the government response be laid on the table at a specific time.

Orders for the production of documents

Going to the content of orders, two orders made on 21 October sought to prompt the production of overdue government responses to reports of the Select Committee on the Administration of Sports Grants and the Standing Committee for the Scrutiny of Delegated Legislation. An order passed on 20 October required the Minister for Superannuation, Financial Services and the Digital Economy to explain the government's failure to comply with an order for documents relating to the Urban Congestion Fund the following day. Similarly, an order moved by leave on 21 October required the Minister representing the Minister for Industry, Energy and Emissions Reduction to attend the Senate

'immediately' to explain the government's failure to comply with an order on net zero emissions modelling.

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

Inquiries

Six bill inquiries were referred as a result of Selection of Bills Committee [Report No 12 for 2021](#).

The matter of the [Sterling Income Trust](#) was referred to the Economics References Committee and the [performance and integrity of Australia's administrative review system](#) was referred to the Legal and Constitutional Affairs References Committee.

Reports

Six reports were tabled during the sitting period, including one bill [report](#). This followed the tabling of a number of bill reports the previous week, out of sitting, including nine bill reports on 14 October. The Select Committee on Australia as a Technology and Financial Centre tabled its third and final [report](#), making twelve recommendations focused on improving the competitiveness of Australia's technology, financial and digital assets industries. The Select Committee on Job Security tabled a second interim [report](#), containing 38 recommendations.

A [report](#) on independent assessments was tabled by the Joint Standing Committee on the National Disability Insurance Scheme. This report focused on proposed changes to the independent assessment regime affecting eligibility for the scheme. The committee found that there was widespread opposition to the proposed changes, and during the committee's inquiry, in July 2021, the Commonwealth Government announced that it would not be proceeding with the changes to individual assessments. The committee's report focused on why there was such strong opposition to the policy, and made six recommendations aimed at improving the financial sustainability of the NDIS, approaches to co-design and consultation, and drawing on bulk-billed medical and allied health appointments to ensure appropriate assessments.

The Senate Standing Committee on Rural and Regional Affairs and Transport tabled a [report](#) on the Federal Government's response to drought, and the Joint Committee on Law Enforcement tabled a [report](#) on the annual report of the Australian Criminal Intelligence Commission.

The Select Committee on the multi-jurisdictional management and execution of the Murray Darling Basin Plan presented its final [report](#) out of sitting, making 18 recommendations. This report included the committee's inquiry into the Constitution Alteration (Water Resources) 2019 Bill.

Supplementary Budget estimates

Estimates hearings took place from 25 to 29 October, and like the previous round of budget estimates, were largely procedurally uneventful. However, unlike the previous estimates rounds, there was much greater reliance on remote participation by video and teleconference for both senators and witnesses due to the impact of the COVID-19 pandemic.

There were examples of witnesses attempting to rely on grounds (such as 'advice to government' see Finance and Public Administration, 29 October) that have not been accepted by the Senate as providing sufficient justification for withholding information, or 'subject to Cabinet deliberations' - see [Environment and Communications, 25 October 2021](#), pp. 4-47 (grounds which have been accepted by the Senate) without also specifying the harm to the public interest that may result if the information were to be provided. However, ultimately witnesses or the relevant minister largely agreed to answer

these questions on notice. Senators did however take the opportunity during estimates hearings to express frustration at the quality of answers being provided on notice, including answers which have the potential to mislead the Senate (see [Legal and Constitutional Affairs](#), 26 October, p.6). Senators also expressed frustration about claims by witnesses that the 'national cabinet' was a committee of 'cabinet' whose deliberations should be kept confidential on the basis that their disclosure would harm the public interest – see [Finance and Public Administration](#), 25 October, pp.68-79.

Other areas of examination involving public funds and administration that received close attention included:

- Measures to counter foreign interference in Australian elections
- The expected life of Collins-class submarines and transition to nuclear-powered submarines
- Progress towards and commitment to a national apology to survivors of thalidomide
- Barriers to attracting workers in aged care, including adequate wages
- Underpayment of workers and resourcing of the Fair Work Ombudsman to pursue non-compliance with awards
- The Department of Veterans' Affairs family assistance package and provision for psychiatric assistance dogs
- Use of management consulting companies in place of government departments for policy and program advice, and
- Engagement of First Nations peoples with the Murray Darling Basin Plan.

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**