



Procedural Information Bulletin

21 December 2022 • No. 367

For the sitting period 21 November to 1 December 2022
and 15 December 2022

Legislation

Thirty-nine government bills and a private members' bill passed the Senate in its final fortnight for the year, after extended sittings and the addition of a sitting Friday.

After around 6 hours of debate, the government's National Anti-Corruption Commission bills – amended in the House in line with recommendations of a Joint Select Committee – passed the Senate with two further amendments proposed by the Australian Greens. Several other amendments failed to find success in either House. These included amendments to remove or refine the 'exceptional circumstances' test for holding public hearings and amendments to extend or define the scope of conduct covered by the bill.

The Senate also spent more than 17 hours considering the 'Secure Jobs, Better Pay' bill – an omnibus Fair Work amendment bill extensively amended in the House while being considered by a Senate legislation committee. During a 12-hour committee stage, the Senate made a further 74 amendments to the bill after the government secured the support of the Australian Greens and Independent Senator David Pocock. The bill passed narrowly with their support, and included a number of amendments they had put forward.

During the committee stage on 1 December, the Chair of Committees ruled that a series of Opposition amendments could not be moved, as they were inconsistent with government amendments already agreed to. An amendment that is 'inconsistent with one that has been agreed to by the committee' cannot be proposed during the same committee stage: SO 118(2). Senators also moved closure of debate on several other Opposition amendments, observing the rule requiring at least 15 minutes between each closure motion in committee of the whole: SO 144(6).

The [Restoring Territory Rights](#) bill was read a second time on 23 November, 41 votes in favour to 25 against. A similar bill was defeated in the Senate in 2018, 34 votes to 36: see [Bulletin 327](#). The Senate had already provided for the bill to be considered on 1 December, and senators indicated they would have amendments to move at that time. The bill sought to repeal limitations on the legislative power of the parliaments of the Australian Capital Territory and the Northern Territory preventing them from passing laws on Voluntary Assisted Dying. Amendments moved by Senator Nampijinpa Price would have instead imposed a narrower constraint; regulating the territories' powers so that any such laws could not exceed safeguards currently found in various state laws relating to age, mental impairment and disability. Those amendments were unsuccessful (25 in favour, 37 against), with a majority of senators taking the view that the territories should have the power to determine the scope of such laws and safeguards themselves. A procedural amendment relating to the approval and importation of drugs

intended for use in ending human life was also rejected, on a vote of 23 to 42 against. The final vote in favour of the bill passed on the voices.

An additional government bill, [regulating the domestic gas market](#), passed under a guillotine, after the Senate was recalled on 15 December, pursuant to [standing order 55\(2\)](#).

Sitting days and estimates hearings

The Senate agreed to its program of sitting days and estimates hearings for 2023. Because a rerun of the Budget occurred in October, there will be no additional appropriation bills this year. Those bills provide the trigger for the round of additional estimates hearings, which usually occur in the Autumn sittings. In the absence of those bills, the government proposed a program that did not include additional estimates. After some negotiation the government amended its proposal to include a supplementary round of estimates hearings early in the new year. The sitting calendar also proposes that the Senate meet on four Fridays throughout the year, and the Manager of Government Business foreshadowed a reference to the Procedure Committee to consider the routine of business for those Fridays.

Orders for documents and compliance

The sitting fortnight saw the first instances in this Parliament of the Senate rejecting public interest immunity (PII) claims advanced by the government to justify the withholding of information sought by Senate orders.

Four of the rejected claims—relating to Hahndorf township improvements, the Gabba Stadium project, program funding in the 2022-23 Budget and the Special Envoy for Disaster Recovery—were made on the basis that their disclosure would ‘cause prejudice’ to relations between the Commonwealth and the states. In rejecting the claims and requiring compliance with the orders, the Senate noted that the agreement of the states to disclose the information, or to give reasons for any objection, had not been sought. A fifth rejected claim, relating to superannuation industry payment disclosures, was made on the basis that the documents sought had been provided to government confidentially. In rejecting the claim, the Senate noted that confidentiality was not, of itself, a recognised PII ground, and that any specific harm could be avoided by disclosing the documents in general terms without revealing personal information.

The Senate’s reasons for rejecting these claims reveal the broader principle that such claims must demonstrate not only a specific harm to the public interest arising from the disclosure of information, but also that such harm cannot reasonably be ameliorated or avoided. However, government responses to three of these further orders for compliance, tabled later in the sitting fortnight, maintained the government’s PII claims without addressing the specific reasons for their rejection by the Senate. The matters remain unresolved.

On 22 November the Senate referred to its Procedure Committee an inquiry into a proposed procedure for senators to review documents subject to orders for production that a minister believes would not be in the public interest to table. This adds to a number of inquiries over the years into potential mechanisms for resolving PII disputes between the Senate and executive government, including a 2015 inquiry by the Procedure Committee into third-party arbitration of PII claims (see *Odgers’ Australian Senate Practice*, p. 649)

The Senate agreed to fourteen new orders for the production of documents over the sitting fortnight. The cumulative list of orders and responses can be found on the Senate’s [business pages](#).

Inquiries

Eight bill inquiries were referred to legislation committees as a result of reports [no. 7](#) and [no. 8](#) of the Selection of Bills Committee.

Four matters were referred to references committees, including:

- [Disruption in Australian school classrooms](#) to the Education and Employment Committee
- [Sexual consent laws](#) to the Legal and Constitutional Affairs Committee
- [Concussions and repeated head trauma in contact sports](#) to the Community Affairs Committee
- [Adaptive sport programs for Australian Defence Force veterans](#) to the Foreign Affairs Defence and Trade Committee.

Two Senate select committees were established. The [Select Committee on disaster resilience](#) was established to inquire into Australia's preparedness and response to disasters. The committee will consider the role of various groups and organisations in disaster response, including the Australian Defence Force and the not-for-profit sector, and report by the last sitting day of September 2023. The [Select Committee on foreign interference through social media](#) will report by 1 August 2023, and is tasked with inquiring into the risk posed to Australia's democracy by foreign interference through social media. A select committee with similar terms of reference was established in the previous parliament.

Reports

Six reports were tabled, including the [final report](#) of the Joint Select Committee on Parliamentary Standards. That committee made 16 recommendations, including that the Senate and the House of Representatives should endorse draft behaviour standards for parliamentary workplaces and behaviour codes for parliamentarians and their staff, pending finalisation of enforcement mechanisms. These are expected to include the Independent Parliamentary Standards Commission recommended in the Set the Standard report.

Two Senate legislation committees tabled reports on the recent examination of budget estimates, however the remaining legislation committees sought extensions of time to report due to the requirement for additional hearings.

Additional budget estimates hearings

Five Senate legislation committees held additional estimates hearings; some by agreement and others through reliance on Senate orders that provide for three members of a legislation committee to require an additional hearing. Committees continued their examination of expenditure of public funds, including appointments to the board of Infrastructure Australia, gas prices, the Melbourne suburban rail loop, the role of the Clean Energy Regulator and the work of the National Indigenous Australians Agency.

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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