



# Procedural Information Bulletin

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For the sitting period 26 July to 4 August 2022

## The 47th Parliament

The general election on 21 May 2022 resulted in a change of government and a very different Senate, incorporating its largest ever crossbench party – the Australian Greens, with 12 senators – and its second largest crossbench: 18 senators in 5 party groupings. In the 45th Parliament, following a double dissolution election, 20 senators were elected to the crossbench and the number rose to 21 with the defection of a government senator.

The Senate's composition suggests a very different dynamic than the 46th Parliament. With 36 seats, the former Coalition government required only two additional votes to block motions, amendments or bills – an equally divided vote is lost – and three additional votes to pass them (presuming senators vote along party lines). With 26 senators, the ALP government needs to find 12 votes to block proposals and one more to pass them.

The opening of parliament on 26 July followed the template for the opening of the previous parliament: see [Bulletin 334](#). Senator Sue Lines, who had been Deputy President since 2016, was elected President, while Senator Andrew McLachlan, a former President of the South Australian Legislative Council, was elected Deputy President and Chair of Committees. The Australian Greens nominated a senator for each role, however, the outcome reflected the long-standing convention that the President is drawn from government senators and the Deputy from the opposition.

The usual motions to appoint sitting days and estimates hearings were agreed on the second sitting day, along with arrangements to allocate departments and agencies to legislation and references committees for examination. The pattern of the Budget estimates hearings is unusual, stretching over 6 rather than 10 days, with a change of horses midstream on 8 November. The opposition noted and accepted the arrangement, on the understanding that the full two-week program would be reinstated for the Budget estimates round in 2023.

Senators also began making their first speeches, according to a schedule agreed by the Senate on 27 July. The first speeches of Senators David Pocock and David Shoebridge were signed by Auslan interpreter Mandy Dolejsi, who appeared onscreen in the chamber. The President also gave an instruction under the Senate's broadcasting resolutions to ensure that the Auslan translation was incorporated into the broadcast of proceedings. In 2008, Ms Dolejsi provided an Auslan translation from the gallery of Senator Stott Despoja's valedictory speech, but it was not incorporated in the broadcast.

## Allegiance

Most senators were sworn in on 26 July, however, two senators were unable to attend on that day and were sworn later. Senator Thorpe caused something of a stir on 1 August by referring to the 'colonising' Queen in making her affirmation of allegiance. The President – who holds a commission from the Governor-General to administer the oath or affirmation – insisted that Senator Thorpe recite the words in the form required by section 42 of the Constitution. Senator Thorpe did so and was therefore able to take her seat and participate in proceedings. The question whether the constitutional requirement to make and subscribe the oath or affirmation has been met is almost certainly not justiciable and therefore a matter for the Senate.

Senator Thorpe has been vocal about her views of Australia as a colonial project, illegitimately occupying unceded land, without consent and without treaty. There was a predictable backlash in the media and online: that the senator ought not be permitted to take her seat because of her 'disrespect' for the Queen or her disdain for the Constitution. Never mind that denying an elected senator her place in the parliament would be profoundly undemocratic. Meanwhile, there was barely a ruffle the previous week when the Assistant Minister for the Republic, Matt Thistlethwaite, MP noted that swearing allegiance to the Queen was 'archaic and ridiculous' and 'does not represent the Australia we live in'.

## Flags

On 27 July, the Senate resolved to have the Aboriginal Flag and the Torres Strait Islander Flag displayed in the Senate chamber, alongside the Australian Flag. A similar proposal had been narrowly defeated in October 2020. Opposition and crossbench senators gave notice of a motion to have the flags of 'all Australian states and territories' similarly displayed, however the matter has not been put to the Senate. The notice notes comments of former senator Ron Boswell recalling in 1992 that 'the Senate chamber of the old Parliament House has the state flags proudly displayed...' However, a search of photos of the old chamber and gentle interrogation of Ushers of the Black Rod of the era have not been able to confirm this.

## Privilege

In March this year, the Environment and Communications References Committee reported to the Senate its concerns about representatives of a resources company who declined invitations and a summons to appear before its inquiry into the Beetaloo Basin: see [Bulletin 362](#). During the election period the chair of the committee wrote to the then President to raise the committee's concerns as a matter of privilege, for investigation as a possible contempt of the Senate.

On 4 August the President made a statement noting that disobedience of lawful Senate orders and refusal to attend before a committee when ordered to do so may be dealt with as contempts, and granting the matter precedence as a matter of privilege. However, given that the matter was raised by a committee of the previous parliament, the President left it to the newly-established references committee to determine whether it wished to proceed in the Senate, or consider other actions first. This might include reiterating the requirement for the witnesses to attend, with the knowledge that preliminary steps have been taken to have the matter dealt with as a contempt.

If the committee brings the matter back to the Senate, it will be for the Senate to determine whether the matter warrants investigation as a possible contempt.

## Orders and explanations

The Senate's ability to order the production of information is a significant power supporting its ability to scrutinise legislation and the performance of executive government, which is frequently discussed in these bulletins. It is an emanation of the Senate's inquiry power, which is among the bundle of 'powers, privileges and immunities' inherited by each of the Commonwealth Houses at Federation.

Orders made on 27 July sought a range of documents relating to the recent foot-and-mouth disease outbreak in Indonesia. Responses tabled on 2 August redacted or withheld information said to reveal deliberative processes of government, subject to legal professional privilege or which may prejudice the investigation of a possible breach of the law. A similar order made on 2 August was met with public interest immunity claims on the grounds of possible prejudice to international relations, and to relations between the Commonwealth and the states.

On 3 August the Senate ordered the agriculture minister to attend the Senate the following day to explain matters relating to the outbreak, including on vaccines and biosecurity arrangements at Australian airports. The minister's explanation was then debated.

Two orders made on 27 July required documents relating to the proposed abolition of the Australian Building and Construction Commission, and recent changes to its powers. Responses tabled on 3 August redacted or withheld some information on the basis that it would reveal Cabinet deliberations, was subject to legal professional privilege or related to current court proceedings.

This is an interesting area to watch. Some of the grounds claimed – for instance, that documents comprise privileged legal advice or are subject to legal professional privilege – have been explicitly rejected by the Senate as unacceptable, including throughout the previous parliament.

### Orders requiring 'statements' etc.

On 3 August the Senate made an order requiring the government to provide 'a statement outlining' statistics on claims for death and injuries arising from COVID-19 vaccines. The government's response challenged the validity of the order because it did not seek 'a document that is in existence, but a statement'. It said, 'The Government does not accept that a minister can be compelled to make a statement through an order for production of documents.' This is somewhat at odds with the view endorsed by the Senate Privileges Committee that 'such orders also cover documents created for the purpose (a 'return to order') from information available to the person to whom the order is directed: [153<sup>rd</sup> report](#), *Guidance for officers giving evidence and providing information*, paragraph 5.25.

The Senate has made many orders over the years requiring information to be compiled in this way. Examples include orders of continuing effect requiring ministers: to periodically produce 'a statement showing' details of unanswered estimates questions (25/6/2014); to compile monthly updates of onshore protection visa lodgements (14/11/2019); and to compile monthly reports on COVID-19 vaccinations (18/3/2021). These and similar orders are [listed online](#) with the Senate's standing orders.

The response went on to say that a request for information of this kind 'is appropriate for a question on notice, not an order for production of documents.' It is odd to imply that an individual senator seeking information is entitled to it, but the Senate by majority vote is not. In any case, senators often initiate orders requiring ministers to respond to unanswered questions.

For an earlier discussion on claims that orders may seek only documents already in existence, see the [occasional note attached to Bulletin 247](#).

Senate orders for documents and responses can be found on the [Senate's business pages](#).

## Inquiries and reports

Ten bill inquiries were referred to legislation standing committees as a result of [report no. 2 of 2022](#) and [report no. 3 of 2022](#) of the Selection of Bills Committee.

A reference on [biosecurity, in particular foot and mouth disease and varroa mite](#), was made to the Rural and Regional Affairs and Transport References Committee, after initial suggestions from the government it could go to the legislation committee. The Senate also re-established a reference [missing and murdered First Nations women and children](#), which was commenced by the Legal and Constitutional Affairs References Committee at the end of the 46<sup>th</sup> Parliament. The Joint Committee on Law Enforcement re-established an inquiry on [law enforcement capabilities in relation to child exploitation](#) that was also started in the previous parliament.

Inquiries on the fisheries quota system, [Beetaloo Basin](#) and [Australia's extinction crisis](#) were re-established as a result of the Senate's agreement to recommendations in reports tabled by the Rural and Regional Affairs and Transport and Environment and Communications References Committees.

The Finance and Public Administration Legislation Committee tabled a report an [Annual Reports No 1 and 2 of 2022](#).

## Committees established

Fifteen joint committees were established by way of resolutions of the House of Representatives, and the concurrence of the Senate. A Senate [select committee on work and care](#) was also appointed and the Senate initiated the re-appointment of a Joint Select Committee on Northern Australia.

Members for most committees, joint and Senate, standing and select, were appointed during the sitting fortnight. Ballots were held on 2 and 4 August to elect the crossbench member of two committees where agreement among crossbench senators could not be reached.

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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)

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