



Procedural Information Bulletin

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For Budget estimates hearings 22 May to 2 June 2023
and the sitting period 13 to 22 June 2023

The Senate and senators

Maria Kovacic was chosen by the Houses of the New South Wales Parliament to fill the vacancy in that state's Senate representation caused by the death of Senator Jim Molan earlier this year. Senator Kovacic was sworn in on 13 June; the first Australian senator to make and subscribe an oath to King Charles III.

Senator Van resigned from the Victorian division of the Liberal Party and moved to the crossbench.

Constitution alteration

The Senate passed a Constitution alteration bill, paving the way for a referendum in the second half of the year. The timing of the referendum is a matter for the Prime Minister, but must be 'not less than two nor more than six months' after the passage of the bill through both Houses: s. 128 of the Constitution. Voters will be asked whether they support a proposed law 'to alter the Constitution to recognise the First Peoples of Australia by establishing an Aboriginal and Torres Strait Islander Voice'; text taken from the long title of the bill.

The Senate sat until 10.30pm on 14 and 15 June for second reading speeches on the bill; the second reading was passed around 6.40 pm on Friday, 16 June and the Senate sat until 4.17am on Saturday, 17 June to deal with the committee stage. Two sets of amendments were dealt with in the first half hour of the committee stage; the remainder of the time involved questions to ministers and general debate on the proposal. The third reading was made an order of the day for the sitting on Monday, 19 June and the bill was passed after a short debate; 52 votes in favour, 19 against.

For the most part, the legislative process for a bill to alter the Constitution is the same as for ordinary bills. The standing orders provide two additional provisions. Standing order 110, requiring a roll call, is usually suspended. The Constitution requires that a proposed alteration must pass each House with an absolute majority. The Senate observes that requirement by recording the votes on the third reading, regardless of whether senators call for a division. An alteration bill is set aside if there is not an absolute majority in favour of its third reading: standing order 135.

Deferral of housing bills

In the May sittings, the government sought unsuccessfully to impose a guillotine on the Housing Australia Future Fund Bill 2023 and related bills: [see Bulletin 371](#). On 19 June, Senator Hanson-Young moved to defer further consideration of the bills until 16 October 2023. That motion succeeded with the support of the Opposition and some crossbench senators.

The representing minister told the Senate that the government considered that the deferral would amount to a failure to pass the bills for the purposes of section 57 of the Constitution. That section deals with disagreements between the Houses on bills. If a House bill is rejected by the Senate, passed again by the House no sooner than 3 months later and is again rejected by the Senate, it becomes (colloquially) a trigger for a double dissolution election. The process and timeframes are clear where the Senate unambiguously rejects a bill by voting it down at one of the stages in the legislative process. However, section 57 also operates where the Senate ‘fails to pass’ a bill. There is less clarity here, particularly around the question of when the Senate should be deemed to have failed to pass a bill.

The guidance from the High Court is chiefly about what *doesn't* constitute a failure to pass. The principal guidance is that ‘The Senate has a duty to properly consider all Bills and cannot be said to have failed to pass a Bill because it was not passed at the first available opportunity; a reasonable amount of time must be allowed’: see *Odgers' Australian Senate Practice*, 14th ed., at p. 720.

In this case, the bills have gone through all of the processes that ordinarily precede substantive debate and the government’s usual power to give them precedence in debate has been taken out of its hands.

The question whether decisions of the Senate in relation to a disputed bill constitute a failure to pass is a matter for judgement of the government in the first instance and of the Governor-General in the event that the government wishes to put the case that the bill has failed to pass the Senate. The High Court does not have a role in determining whether the procedures mandated by section 57 have been met unless the validity of an Act passed in apparent compliance with those provisions is challenged. If the Court subsequently finds such a law to be invalid this does not invalidate the dissolution of the two Houses.

Legislation

The Senate passed 33 bills, including the Constitutional alteration. Around half of those bills were passed under a guillotine on the final sitting day.

In all, five bills were passed with amendments and another – the Education Legislation Amendment ([Startup Year and Other Measures](#)) Bill – passed with amendments and requests for amendments. Requests were required as the changes sought to expand the eligibility for certain higher education support payments and payments under the social security law. This would necessitate additional expenditure out of relevant standing appropriations. By longstanding practice, the Senate deals with such matters by way of requests to the House under section 53 of the Constitution. The House made the requested amendments, enabling the third reading of the bill in the Senate.

Two private senators’ bills were negatived. On 14 June the Senate again rejected a bill proposed by Senator Hanson, at its first reading: [see Bulletin 371](#). The Senate also rejected a proposal to refer the bill for a committee inquiry. The following day a bill from Senator Rice, proposing to end the logging of native forests, was negatived at the end of its second reading debate.

Rules for questions

The Minister for Finance, Senator Gallagher, made a statement at the start of the sittings in response to allegations in the media that she had misled the Senate at an estimates hearing in June 2021, before she was a minister.

Opposition senators asked multiple questions on the matter over the ensuing weeks, including on statements made and events occurring prior to Senator Gallagher becoming a minister. On 16 June the President made a statement reminding senators that questions must relate to matters of ministerial

responsibility. This has long been taken to mean the public affairs with which the minister is officially connected, proceedings pending in Parliament, or any matter of administration for which the minister is responsible in a personal or representative capacity. Drawing on earlier rulings, the President noted that questions may also seek clarification of statements made by ministers – as ministers – even if the statements are not clearly within their ministerial responsibility. Questions are not in order if they ask about statements made by senators when they were not ministers.

Where it is not clear whether a question is out of order on this basis, Presidents have generally invited ministers to answer questions to the extent that they relate to ministerial responsibility. President Ryan took the view that, even when a question is ruled out of order, it was fair and reasonable to give the minister an opportunity to respond to any assertion contained in the question. The President indicated that she had adopted that approach during the sitting week.

The President also noted that, if a question is ruled out of order, but the minister accepts her invitation to respond, the standing orders requiring that answers be directly relevant did not strictly apply, but that ministers should confine their remarks to matters within their ministerial responsibilities.

The President also made a statement on 20 June reminding senators to be clear about the connection between primary questions and answers and supplementary questions, and on 22 June reminding senators that questions should not contain statements or other extraneous material.

Orders for documents and responses

On 22 June, the Senate agreed to three orders seeking compliance with previous orders, with two of these rejecting public interest immunity (PII) claims raised by the government to withhold the information sought. An order for the National Disability Insurance Scheme Financial Sustainability Framework declared that the public interest in disclosing the framework would outweigh 'any potential prejudice to relations between the Commonwealth and the states'. An order seeking information concerning the resignation of the President of the Administrative Appeals Tribunal noted that the Senate has not recognised impacts on the 'frankness of future communications between statutory office holders and ministers' as a basis for raising PII claims. The third order, requiring information relating to the crash of a Defence MRH-90 helicopter at Jervis Bay by 1 November, followed advice from the Minister for Defence that a response would not be provided until the completion of an internal investigation into the incident.

The government tabled 10 responses to orders for documents, including in relation to Australia's credit rating, native timber harvesting in WA and interactions between the AFP and PricewaterhouseCoopers. However, PII claims were raised as the basis for withholding information relating to meetings of infrastructure and transport ministers (prejudice to Commonwealth-State relations) and the SmartCard scheme (damage to commercial interests).

The Senate agreed to 20 new orders, including two orders adopting the recommendations of an Economics References Committee interim report on the Australian Securities and Investment Commission. Three proposed orders, relating to the Women's Economic Equality Taskforce, native timber harvesting in Victoria and the National Aboriginal and Torres Strait Islander Corporation, were negatived.

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

Budget estimates 2023-24

Budget estimates hearings took place from 22 May to 2 June.

Areas of examination involving public funds and administration included:

- the impact on multiple Commonwealth departments and agencies of the breach of confidentiality agreements by PwC
- action taken by the Department of Climate Change, Energy, the Environment and Water to prevent modern slavery in solar panel supply chains
- timeframes and statutory requirements related to Freedom of Information
- factors pushing up food prices, including supermarket competition regulation
- negotiations for a bilateral security treaty between Australia and Papua New Guinea
- indexation of tertiary education debts.

PwC

The Finance and Public Administration References Committee tabled a scathing [interim report](#) concerning allegations about the conduct of PwC, as part of its inquiry into the management and assurance of integrity by consulting services. The committee noted that it was tabling the interim report due to the 'substantial public interest in the matter of PricewaterhouseCoopers' (now PwC's) conduct in relation to Australia's anti-avoidance tax laws, dating back to 2013'.

The committee made two recommendations, including that PwC publish the names and positions of those involved in the breach of confidentiality agreements, and detail their involvement. The committee considered whether it should publish the list of names itself. The legislation committee had considered the same matter during its estimates hearings. Both committees accepted advice from the Senate Clerk that it was well within their power to do so, and that their decisions ought turn on their assessment of the public interest. The committee gave considerable weight to the need to provide procedural fairness to people who might be included on such lists, but have little or no involvement. The committee adopted the view that PwC is best placed to minimise the reputational damage likely to flow to personnel that PwC says were only peripherally involved in the breach of trust. It therefore pressed PwC to publish accurate information about the involvement of its partners and personnel in the interest of transparency and accountability.

Inquiries

Committee work continues apace! Twelve bills were referred to legislation committees as a result of [report no. 6](#) of 2023 and [report no. 7](#) of 2023 of the Selection of Bills Committee.

In addition, the [Murdoch Media Inquiry Bill 2023](#), a private senator's bill, was referred to the Environment and Communications Legislation Committee for inquiry and report as a result of an earlier order of the Senate.

The [worsening rental crisis](#) and [access to diagnosis and treatment for individuals with rare and less common cancers](#) were referred to the Community Affairs References Committee, and the issue of [residential electrification](#) was referred to the Economics References Committee.

The Foreign Affairs, Defence and Trade Legislation Committee established an [inquiry](#) under Standing Order 25(2)(a)(v) into the performance of the Department of Defence in supporting the capability and capacity of Australia's defence industry.

The Parliamentary Joint Committee on Corporations and Financial Service resolved to establish three new inquiries, including an [inquiry](#) related to structural challenges in the audit, assurance and consultancy industry.

Finally, a [select committee](#) on the Perth Mint and Commonwealth regulatory compliance was established, with a reporting date of 13 December 2023.

Reports

Ten reports were tabled during the sitting period, with a number of others presented prior to the sitting of the Senate. Among the reports tabled was the [interim report](#) of the Select Committee on the Provision of and Access to Dental Services in Australia which reported the results of its survey conducted between 17 April, and 4 June, 2023. The survey attracted 17,547 responses during this time.

The Economics References Committee tabled an [interim report](#) on its inquiry into the capacity and capability of the Australian Securities and Investments Commission (ASIC) to undertake proportionate investigation and enforcement action, detailing its rejection of 11 of the 13 public interest immunity claims made by the ASIC Chairman during the inquiry to date. The two recommendations contained in the report were adopted by the Senate and operate as an order to produce documents to the committee by 18 July 2023.

The Joint Committee on the Australian Commission for Law Enforcement Integrity tabled its final [report](#). On 1 July 2023 the Australian Commission for Law Enforcement Integrity will be absorbed into the new National Anti-Corruption Commission, and therefore the committee will cease to exist. The committee's final report provides an overview of its activities and inquiries from the time it was established in the 41st Parliament.

Oversight of the National Anti-Corruption Commission will be undertaken by the Parliamentary Joint Committee on the National Anti-Corruption Commission.

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**