



Procedural Information Bulletin

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For the sitting period 10 to 20 September 2018

Senators

Changes to the Ministry, ministerial representation and leadership arrangements were announced when the Senate resumed on 10 September. Various changes to the membership and chairing of committees, deputy whipping arrangements and the panel of [temporary chairs of committees](#) followed. On 17 September the Senate varied the allocation of portfolios to legislation committees for estimates hearings and oversight of departments and agencies.

Senator Larissa Waters returned to the Senate, filling the casual vacancy caused by the resignation of Senator Andrew Bartlett, who had been declared elected following her resignation in July last year and subsequent court orders on her eligibility (see Bulletins [317](#), [319](#) and [327](#)).

Legislation

Some 30 government bills were passed during the fortnight; nine with amendments.

Government amendments to the [Cashless Debit Card Trial Expansion](#) bill moved substantive provisions of the determination under which the trial has been administered into the relevant Act. The minister explained that the move was intended to increase certainty for trial participants, but some senators were concerned that parliamentary oversight through the disallowance process might be reduced. Government amendments to the [Civil Law and Justice Legislation Amendment Bill 2017](#) implemented recommendations of [Scrutiny Digest 5/2017](#), among other things.

For the second time in the 45th Parliament, a bill went through all stages in both Houses in a day. The [Criminal Code Amendment \(Food Contamination\) Bill 2018](#) introduced new offences, and increased penalties for existing offences, to deal with food supply contamination, following a spate of incidents involving the contamination of strawberries.

The Senate also passed a private senators' bill intended to [end long-haul live sheep exports](#). An attempt by non-government members to have the bill debated in the House on the same day was narrowly defeated. Despite a subsequent Senate resolution calling on the Government to allow the bill to proceed and grant a conscience vote to its members, it remains on the House *Notice Paper*.

Disallowance

A motion proposing to disallow the [Great Barrier Reef Marine Park Amendment \(Hammerhead Shark\) Regulations 2018](#) was deferred until 12 September; the last day of its disallowance period. One consequence of dealing with a disallowance on its last day is the likelihood that debate will be truncated. If a disallowance motion is not dealt with within the period prescribed by the *Legislation Act 2003*, the instrument in question is deemed to be disallowed. The Senate has consistently indicated

a preference for having such matters determined by a vote, rather than by default. In this case, the Senate agreed to a motion in the now-familiar form to ensure that the vote was held before the Senate adjourned. The disallowance was defeated after a short debate.

A motion proposing to disallow a social security instrument specifying [participation requirements for certain parenting payments](#) was defeated on 13 September, meaning the instrument remains in force.

Compliance with orders for documents

The fortnight saw the usual mix of responses to Senate orders for documents, with documents provided in response to some orders and public interest immunity claims made in response to others, setting out the government's reasons for not complying.

On 17 September, the Minister representing the Minister for Defence (Industries) made a statement pursuant to order (see [Bulletin 327](#)) explaining the reasons for non-compliance with orders relating to the Future Submarine Project. After the Senate noted the minister's explanation, the originator of those orders proposed a motion banishing the minister from the (physical) front-bench seats in the Senate, which are reserved for ministers under standing order 48. The motion failed, for want of support from government and opposition senators.

On the same day, the Senate rejected a public interest immunity claim made by the government to resist tabling of a 'due diligence' report, prepared by the Australian Government Solicitor, relating to a grant to the Great Barrier Reef Foundation; part of a longer order for documents held by the then Department of the Environment and Energy. The basis for the claim was the supposed convention that governments do not table legal advice. Unsurprisingly, governments do occasionally disclose advice, including legal advice, when it supports their position: see [Odgers' Australian Senate Practice](#), 14th ed., p 668. The resolution rejecting the claim emphasised that the government must establish that there is some particular harm to be apprehended by the disclosure of the information.

On 20 September, the Senate rejected the public interest immunity claim made by the government to resist tabling the final report of the Religious Freedom Review Expert Panel. The claim invoked cabinet confidentiality. The resolution rejecting the claim questioned how the publication of the report could reveal cabinet *deliberations*, which is the accepted ground for such a claim: see [Odgers, p. 665](#). The government reiterated its claim later in the day, maintaining that the release of the document 'at this time... would interfere with the proper consideration by and deliberative process of Cabinet.'

Full details of orders and responses can be found [online](#).

Directions to committees

Like most representative legislative assemblies, the Senate delegates some its tasks, and the power to carry them out, to committees of its members. Usually, the Senate leaves the organisation of those tasks to the committee, but retains the right to direct committees should it see fit. Such is the case in relation to the inquiry by the Legal and Constitutional Affairs Legislation Committee into the Federal Circuit and Family Court of Australia Bill 2018.

The bill was referred to the committee, on recommendation of the Selection of Bills committee. The Senate rejected a government proposal that the committee report by 1 November 2018 and instead agreed that it report by 15 April 2019. In planning its inquiry, the government-majority committee apparently decided it would nevertheless report by 26 November 2018, possibly facilitating earlier

consideration of the bill. On 12 September, the Senate directed the committee to set 23 November 2018 as the closing date for submissions. On 18 September, the Senate directed the committee to conduct public hearings only after the submission closing date. These directions seem intended to steer the committee toward its 2019 reporting date.

Similar powers came into play on 20 September, with the Senate directing that estimates hearings suspend for a time to enable senators to attend the National Apology for victims of institutional child sexual abuse on 22 October.

Procedure Committee

The Procedure Committee tabled two reports during the fortnight. Its [second report of 2018](#) dealt with a proposal to replace the parliamentary prayer with an ‘invitation to personal prayer or reflection’. The committee received more than 800 submissions, the vast majority of which opposed the proposal, and the committee formed the view that there was no momentum for change. The committee also considered whether an invitation to personal prayer or reflection could be inserted alongside the current prayer, and noted the practice in some jurisdictions of the chair inviting another member to read the prayer. The committee drew those matters to the attention of senators, but did not recommend any change.

The [third report of 2018](#) dealt with disorder outside formal proceedings. The matter was referred by the President following the statement he made on 13 August, in response to an exchange between senators at the end of the Winter sittings. The committee endorsed the approach signalled in the President’s statement, and his observations that personal abuse has no place in the Senate. The technicality that conduct alleged to be disorderly occurs alongside, but not as part of, formal proceedings, does not prevent the chair dealing with it in accordance with the standing orders. However, the committee agreed that it was generally undesirable to change the basis for dealing with disorder, which requires senators to raise points of order at the time of the incident to which they relate.

Reports on annual reports

Evidence of one of the legislative and general purpose standing committees’ unsung accountability responsibilities occurred during the sitting fortnight when reports on annual reports were tabled. This occurs twice a year. Standing order 25(20) requires legislation committees to examine each annual report referred to it and report to the Senate whether the report is ‘apparently satisfactory’. As part of that assessment, committees consider any lateness in the presentation of the report, and draw to the attention of the Senate any significant matters relating to the operations and performance of the bodies furnishing the annual report.

A number of improvements to annual reports have been made as a result of this process. One recent example was an increase in detailed information provided about senior executive remuneration following a close focus on the issue by the Environment and Communications Legislation Committee.

Notable reports

The Legal and Constitutional Affairs References Committee was in the spotlight as a result of its inquiry into *Allegations concerning the inappropriate exercise of ministerial powers, with respect to the visa status of au pairs and related matters*. The report was tabled on 19 September and drew significant

attention in the Senate and the media.

Other reports that garnered considerable interest were the Foreign Affairs, Defence and Trade References Committee's report on their inquiry into the *Proposed Comprehensive and Progressive Agreement for the Trans-Pacific Partnership* and the Law Enforcement Joint Committee's report on *Trade in elephant ivory and rhino horn*.

The Select Committee on the Future of Work and Workers also tabled its report and, in so doing, brought its existence to an end.

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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