



Procedural Information Bulletin

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Search warrants and parliamentary privilege

The first of three matters referred to the Privileges Committee during the week arose from the execution of search warrants in aid of an AFP investigation into a 'leak', widely reported (and later confirmed) to be connected to the exercise of ministerial powers in relation to visas granted to au pairs. There had been an exchange about the investigation at a Legal and Constitutional Affairs References Committee hearing on the au pair matter and, on 11 October, during the execution of the warrants, the chair of that committee made a claim of privilege over the seized material.

The President informed the Senate of the matter on 15 October, and reminded senators of the arrangements protecting parliamentary material from seizure under warrant. When a senator claims parliamentary privilege over seized material, it is sealed and held by a neutral third party while the claim is determined. If the claim is upheld, the material is returned to the senator, and withheld from the investigation. It is a matter for the senator whether to seek a ruling on the material from a court or from the Senate.

The procedures are contained in an [AFP guideline](#), which was recently tested for the first time in the investigation of a suspected leak from NBN Co. That matter involved the execution of search warrants at then Senator Conroy's Melbourne office, at the home of one of his staff, and at Parliament House, during the election period in 2016. The Senate resolved to uphold the claim, on the recommendation of the Privileges Committee, after an inquiry into the matter (see the committee's [163rd](#) and [164th](#) reports; Bulletins [306](#), [310](#) and [313](#)).

In the current matter, Senator Pratt claimed parliamentary privilege over the seized material, which was delivered into the custody of the Clerk of the Senate. In accordance with the guideline, Senator Pratt notified the AFP that she is maintaining her claim of privilege over the documents, and notified the President of her intention to seek a ruling on the claim from the Senate. Senator Pratt gave notice of a motion to refer the matter, and it was agreed to without debate on 16 October.

Internal party matters and contempt

On 16 October, the President made a statement granting precedence to a matter of privilege raised by Senator Burston, alleging that – while he was a member of Pauline Hanson's One Nation – Senator Hanson removed him from positions within the party and pressed him to resign from the Senate, to influence his vote on company tax legislation. Senator Burston alleges that Senator Hanson has thereby sought to improperly interfere with the free performance of his duties as a senator or penalise him for his conduct as a senator.

The President noted that any credible allegation that a person has sought to intimidate a senator to change their vote is a serious one, but that the question whether such an allegation warrants investigation is not one for him, but for the Senate. To assist the Senate in that decision, President drew attention to the guidance of the Privileges Committee in a similar matter, involving former Senator Grant Tambling. (Senator Tambling was instructed by his party organisation to vote against the government position on the Interactive Gambling Bill 2001, and lost his preselection when he failed to do so.) The committee's guidance indicates a high degree of reluctance to intervene in internal party matters, but does not entirely close the door on the possibility that the Senate's contempt jurisdiction might be invoked in such circumstances (see the [103rd report](#) of the Privileges Committee; paragraphs 1.58 – 59).

The Senate agreed to refer the matter the following day.

Parliamentary FIT scheme

The third matter referred to the Privileges Committee flows from the passage of the [Foreign Influence Transparency Scheme Bill](#) in June this year. The scheme requires people acting on behalf of foreign principals to register their participation in prescribed lobbying and communication activities, if those activities are undertaken 'for the purpose of political or governmental influence'. Notably, this is defined to include activities intended to influence parliamentary proceedings.

[Amendments recommended by the Parliamentary Joint Committee on Intelligence and Security](#) substantially narrowed the scope of the scheme, and also operated to preserve parliamentary privilege and put privileged material beyond its reach (see Bulletin [326](#)). The amendments went further, excluding senators and members from the scheme entirely, and the PJCIS asked the Houses to develop a parallel transparency scheme appropriately tailored for the parliamentary environment.

The House of Representatives has made a similar reference to its privileges committee and it is expected that the committees will confer on the matter.

Politics and the Senate's program

There were several unscheduled debates during the sitting week. On 15 October, the Minister for Communications and the Arts made a statement on the Australian Broadcasting Corporation, following the dismissal by its Board of its Managing Director, and the subsequent resignation of its Chairman. The question of possible government interference in the ABC was referred to the Environment and Communications References Committee the following day.

On 16 October, the Leader of the Government made a statement apologising for a 'regrettable' vote by government senators in favour of a motion deploring 'the rise of anti-white racism', sparking a robust debate before the motion was put again. The government had to move to suspend standing orders to have the vote put again, after leave to do so was denied.

On 17 October, elements of the usual program were set aside so the Senate could debate the Australian Greens' Discrimination Free Schools Bill 2018, one of several responses to the publication the previous week of leaked extracts from the report of the Ruddock Religious Freedom Review. Another order was made requiring the government to table that report, with the government reiterating its claim of

cabinet confidentiality: as the review was commissioned by Cabinet, its disclosure would reveal Cabinet deliberations. Failure to comply with the order triggered a requirement for the minister to explain (again) the government's position, which was debated for a time on 17 October.

Several other proposals to suspend standing orders and divert from the Senate's program were rejected. The Senate also resorted to a guillotine on the last sitting day to ensure the passage of two packages of bills (see below).

Legislation

The main legislative item for the week was consideration of the [Customs Amendment TPP Implementation bill](#), and an associated [tariff bill](#), which were debated over several days and passed on 17 October without amendment. The debate included discussion of the parliament's role in the treaty-making process, with several senators arguing for an earlier and enlarged role for the Joint Committee on Treaties. [The opposition also introduced a bill entitled A Fair Go For Australians in Trade Bill 2018 to 'fix the way the Commonwealth negotiates' free trade agreements.]

Attempts to delay consideration and commencement of the TPP implementation bills until aspects of the treaty were renegotiated were unsuccessful. Similar amendments were also proposed to the [Government Procurement \(Judicial Review\) bill](#), but it too passed without amendment on 18 October. That bill vests federal courts with jurisdiction in various matters, enabling Australia to meet international obligations on government procurement, including obligations now found in the TPP-11 treaty.

The procurement bill was considered under a guillotine on 18 October, requiring questions to be put on the bill and any circulated amendments at 11.45am. That deadline also applied to a [government bill to accelerate the tax cuts](#) for small- and medium-sized businesses, which was therefore passed without debate. Amendments circulated jointly by Australian Conservatives and Liberal Democratic Party senators to further accelerate the tax cuts were unsuccessful.

A handful of other government bills were also passed, without amendment.

On 18 October, the Senate took the unusual step of rejecting a bill at the first reading stage. Senator Anning had sought to postpone the introduction of his Plebiscite (Restricting Non-European Migration) Bill 2018; however, the Senate required that it be dealt with, after several senators condemned the bill in statements on that motion. The bill was then introduced and the motion for the first reading was negated on the voices; Senator Anning lacking the second voice 'for the Ayes' that would be required to call a division on the matter.

Scrutiny of telecommunications access bill

The Senate Scrutiny of Bills Committee considers all bills before the Parliament on a non-partisan basis by applying criteria that focus on the effect of proposed legislation on individual rights and obligations, and on parliamentary scrutiny. The committee identified a number of scrutiny concerns with the Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018 (see [Scrutiny Digest 12 of 2018](#)). The committee is seeking advice from the minister in relation to matters including the breadth of proposed powers to require a communications provider to give assistance to law enforcement, intelligence and security agencies. Ministers routinely provide responses to the address the committee's concerns and may also propose amendments to bills or to the explanatory material that accompanies them. The Parliamentary Joint Committee on Intelligence and Security is

also conducting an inquiry into the bill. A joint submission to that inquiry by technology companies and civil society groups argues that some of its provisions would threaten cybersecurity and privacy by undermining encryption.

Senate directs committee...again

Following on from the last sitting period which saw some committees directed by the Senate to conduct aspects of their inquiries in a particular way, the Senate this time considered aspects of the operations of the Environment and Communications Legislation Committee in relation to its upcoming supplementary budget estimates hearings.

The Senate agreed to a motion requiring the attendance of the Chair of NBNC0 at the hearing 'for as long as the NBNC0 is called by the committee.' In addition, a motion was moved requiring the committee to call on a particular area of the Environment and Energy portfolio by a specified time. This motion was defeated.

Order to produce documents to committee

The Senate agreed to an order requiring the Commissioner of Taxation to provide information to the Economics Legislation Committee regarding APRA-regulated entities by no later than 18 October 2018 and information regarding certain individual taxpayers by no later than 29 November 2018. This follows an earlier 14 August resolution that sought similar information, to which the ATO responded by seeking clarification of the scope of the order. The new resolution provided the clarification required.

The committee reported to the Senate on 18 October that the required information had been provided. The usual account of orders and responses can be found [online](#).

Inquiries and reports

Several new inquiries were initiated, including one on the Australian Pesticides and Veterinary Medicines Authority by the Rural and Regional Affairs and Transport (RRAT) References Committee, one on political interference in the ABC to be conducted by the Environment and Communications References Committee, and one on credit and financial services targeted at Australians at risk of financial hardship by the Economics References Committee.

The Education and Employment References Committee tabled its report into the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia. In an unusual move, and to give due weight to the harrowing testimony of the families and friends of people killed at work, the committee devoted the first substantive chapter of its report to extensive reproduction of their testimony as recorded in Hansard transcripts of hearings. Many of those who had given evidence to the committee were in the public gallery when the report was tabled.

Other references committees tabled reports on the safety of pet food (RRAT), the commitment to the Senate issued by the Business Council of Australia (Economics), and the My Health Record system (Community Affairs).

Estimates and accountability

Estimates scrutiny is an important element of the Senate's role as a check on government. In support of this, the Senate has passed a number of resolutions underlining this point, most recently in 2014. [One such resolution](#) reaffirms previous resolutions addressing the responsibility of officers to account for their stewardship of public funds. Among other things, it reminds officers that 'there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details of explanations from the Parliament or its committees' and that 'the Constitutional framework of checks and balances under a separation of powers places the Parliament in prime position as the agent of accountability, representing the Australian people.'

It is against this background that senators sought answers from the executive to questions about the expenditure of public funds. The vast majority of questions elicited prompt answers in keeping with the guidelines issued by the executive to its own officers to 'assist in the freest flow on information to the parliament'. Sometimes, however, officers or ministers are reluctant to answer questions on the grounds that some information should not be in the public domain. (The rules of the Senate require all evidence in estimates hearings to be taken in public.) When this occurs, discussion ensues about the grounds for withholding such information. The process to be followed by an officer or minister who seeks to make a public interest immunity claim is set out in the resolution of the Senate of [13 May 2009](#). Should a committee or an individual senator not accept the claim, it is open to them to report the failure to provide the information to the Senate.

There were several discussions about withholding information over the course of the week, three of which are outlined below.

- Public interest immunity claims from the May budget estimates hearings were revisited in the Legal and Constitutional Affairs Legislation Committee. Officers from the Australian Federal Police declined to answer a number of questions about an investigation into an unauthorised disclosure regarding the execution of a search warrant on the offices of the AWU on the grounds that revealing the information may prejudice investigations. The AFP relied on a PII claim previously put to and accepted by the committee.
- In the hearings of the Finance and Public Affairs Legislation Committee, the Auditor-General indicated that two agencies had provided feedback that, if the ANAO sought to include certain information in an audit report, the agencies would seek a certificate under section 37 of the *Auditor-General Act 1997* preventing the Auditor-General from including particular information in a public report.

A senator asked which two agencies had requested the certificates. The Auditor-General declined to name the agencies, stating that 'relationships are critical in audits'. The Auditor-General noted that the agencies in question had raised these issues early in the audit process, and he wanted the opportunity to work through the remainder of the audit process with them. While the senator indicated that he was not going to push for an answer, he did note that other senators may wish to follow up the matter with the agencies involved.

- In the hearings of the Rural and Regional Affairs and Transport Legislation Committee, the minister representing the Minister for Agriculture reasserted a public interest immunity claim in relation to documents sought by the committee from the Department of Agriculture and Water Resources relating to a tender process on commercial-in-confidence grounds. The minister read the claim onto the public record, noting that the release of the information requested would 'set a

precedent that could result in commercial firms ceasing to engage in commercial arrangements with the Commonwealth on the basis that such an engagement could risk publication of their commercially sensitive information. This outcome would materially impact the Commonwealth's ability to negotiate and contract with commercial entities'. The committee deferred consideration of the claim to a later time.

Matters covered in estimates

The Environment and Communications Legislation Committee took the opportunity to question the Minister for Environment and Communications and senior ABC staff about recent changes to the leadership of the ABC. A separate inquiry into the changes at the ABC sits with the Environment and Communications References Committee.

Other areas covered by committees included:

- Effects and benefits of inland rail on regional communities
- Seizure by the AFP of documents within the Department of Home Affairs
- Building works and security upgrades at Parliament House
- Coral bleaching as mapped by the Great Barrier Reef Marine Park Authority
- Australia Post's strategy to improve the viability of licensed post offices
- review of the *Public Governance, Performance and Accountability Act 2013*
- publication of the final report of the Religious Freedom Review
- beef exports to Asia
- wait times for home care packages
- effects of the US interest rate rise on Australia
- implementation of the Time to Work program
- Australia's relationship with Saudi Arabia.

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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