



Procedural Information Bulletin

7 September 2020 • No. 346

For the sitting period 24 August to 3 September 2020

Senate sittings and COVID-19

The President made a statement on 24 August on three matters connected with the sittings of the Senate and the COVID-19 pandemic.

First, he drew attention to the statement he and the Speaker had made on 17 August regarding the operations of Parliament House, and subsequent health advice recommending that masks be worn in the common public areas of the building. In doing so he also noted the continuation of the procedural variations implemented in the Senate since March to observe health advice on hygiene and distancing.

The President also drew attention to the statement he had made on 18 July, indicating that the sittings scheduled for the weeks of 4 and 11 August 2020 would not occur. Advice from the Acting Chief Medical Officer had recommended against parliamentarians and staff travelling to Canberra given the health situation then unfolding in Victoria, leading the Prime Minister to announce that the House of Representatives would not meet. The Leaders of the Government and Opposition in the Senate then wrote to the President requesting that the sittings not take place.

This was the first time scheduled sittings had been set aside in this way. There are precedents for presidents altering the commencement of sittings in extraordinary circumstances or, as occurred on 12 June this year, for reasons connected to the conduct of Senate business. These have occurred with the concurrence of senators, demonstrating the principle that the Senate controls its own meetings. On this occasion, the request was made on behalf of more than three-quarters of senators so that, if the sitting had gone ahead, it would not have been possible to establish or maintain a quorum. The President noted that “this high threshold of such action being taken only when a quorum would not be possible protects the autonomy of the Senate to determine its own meetings.”

Finally, the President made a statement about the risk of executive-imposed travel restrictions and quarantine requirements constraining the ability of senators to undertake their parliamentary duties. He noted the ancient right of those elected to attend and participate in parliament, underpinned in Australia by constitutional design intended to ensure that the Senate, in particular, can undertake its functions with an appropriate degree of independence. He noted that:

Unilateral actions by executives—whether Commonwealth, state or territory—that impede the performance of Commonwealth parliamentary functions are problematic from a constitutional perspective. This remains the case even where, as is the case with border restrictions and quarantine requirements imposed at a state and territory level, that action is founded on or in aid of genuine public health advice and goals.

While unilateral executive action ran the risk of improperly interfering with the parliament, the President went on to note that this “may be largely avoided where the requisite action, in this case a response to the public health advice, is developed cooperatively by the institutions concerned.”

On 3 September, the Leaders of the Government and Opposition in the Senate proposed a resolution affirming the right of the Senate to determine its own meetings and the rights of senators to attend. In agreeing to the proposal the Senate called on all executive governments and agencies “to have appropriate regard to these matters in devising and implementing public health measures and, wherever possible, to do so in consultation with representatives of the Senate.” Consequential matters were also referred to the Procedure Committee.

Remote participation in Senate proceedings

On 21 August 2020, the Procedure Committee presented its [first report of 2020](#), recommending a set of rules to enable senators to participate in Senate proceedings by video link “while they are prevented from physically attending the Senate because of travel restrictions, quarantine requirements or personal health advice.” The possibility of remote participation was raised early in the pandemic (see [Bulletin 342](#)), but only came into focus after the sittings scheduled for early August were set aside.

The committee agreed that the circumstances of the COVID-19 pandemic warranted an evolution in existing rules to allow senators to address the Senate remotely, but determined that the Senate’s proceedings should be managed in the Senate itself. This reflected a view about “the primacy of attendance in the Parliament as the key means for senators to engage in and determine its work.” It was on this basis that the rules provided that remote participants ought not count toward the Senate quorum, nor participate in formal votes, although the committee did not discount the possibility that different arrangements might be warranted in other circumstances. The other practical outcome of the committee’s approach was that senators participating remotely may not move motions and amendments, although colleagues in the Senate could move them on their behalf. However, the committee recommended a significant exception, enabling remote senators to move amendments and requests in committee of the whole, so that all parties could have their legislative proposals considered and determined.

The rules were adopted at the start of the sitting on 24 August, with effect for the sitting fortnight, and the first remote contributions were made later that day. By fortnight’s end, senators from every state other than New South Wales had used the facility.

On 1 September, the Leaders of the Government and Opposition in the Senate each made a statement confirming the desirability of maintaining pairing arrangements to ensure that the decisions of the Senate properly reflected the composition of the Senate as elected, and indicating their agreement about steps the Government and Opposition would take to ensure the transparency of pairing arrangements while numerous senators – including in some cases all representatives from one party – were participating remotely.

Despite travel restrictions, quarantine and remote participation, some 62 of 76 senators attended the sittings in Canberra.

Senators

On 24 August Senator Patrick informed the Senate he was no longer a member of Centre Alliance, but would sit in the Senate as an independent.

On 25 August Senator Di Natale made a valedictory statement to the Senate – by video link – pending his resignation the following day. On 4 September a joint sitting of the Victorian Parliament chose Lidia Thorpe to fill the resulting vacancy. It is expected Senator Thorpe will be sworn on 6 October, although her work on Senate committees has already commenced (see below).

Orders, explanations and censure

On 3 September the Senate took the rare step of censuring a minister, in this case the Minister for Aged Care and Senior Australians in respect of the administration of his portfolio during the COVID-19 pandemic. That subject had been the focus of opposition questions at Question Time during much of the fortnight, and was also the subject of orders for documents, urgency motions and a motion requiring the minister to attend the Senate to make an explanation on 27 August. The censure was supported by all non-government parties and independent senators.

The Minister representing the Minister for Resources, Water and Northern Australia was also required to make an explanation to the Senate on 31 August, relating to water purchases in the Murray-Darling Basin. The explanation was sought by Senator Patrick after details denied to the Senate in response to an order for documents were later provided in response to requests under the Freedom of Information Act. The minister explained that provision of the information had become less commercially-sensitive over time.

On 2 September the Community Affairs References Committee, having tabled its [second interim report](#) on Centrelink's compliance program the day before, tabled a [third interim report](#), detailing the majority committee's rejection of public interest immunity claims made by the Minister for Government Services. The Senate adopted the recommendations in the report, requiring the responsible minister to provide the information (including to the committee in camera, if necessary) or to attend the Senate on 6 October 2020 to explain any failure to comply.

On 25 August the President ruled on a matter raised under standing order 164(3), which allows a senator to seek an explanation of a minister's failure to comply with an order for documents. Although that provision was inserted into the standing orders in 2005, it has been used on only a handful of occasions and its interpretation has not been the subject of any previous rulings. Consistent with a similar process in standing order 74(5) relating to unanswered questions, the President ruled that the process is not available if a minister has apparently complied with the order. This includes circumstances where the response is that no documents within the terms of the order exist. Absent a Senate motion contesting the minister's response, it was reasonable to accept it according to its terms.

On the final sitting day the Government presented its regular report on the status of public interest immunity claims made in response to orders for documents during the current parliament.

The cumulative details of all orders and responses are on the [Senate's business pages](#).

Temporary procedural orders

The temporary orders agreed to on 17 June, placing word limits on general business notices of motion and limiting the number that could be dealt with as formal motions (see [Bulletin 345](#)) operated effectively during the fortnight. A crossbench proposal to vary the limits on formal motions was discussed by way of statements by leave on 25 August, where it was noted that the proposal could be considered in the review to be undertaken by the Procedure Committee.

On 25 August the Senate adopted as permanent changes to the standing orders a series of temporary orders streamlining aspects of Senate business and reducing speaking times in general debate, which had been adopted as a trial on 3 December 2019: see [Bulletin 339](#).

Disallowance

A proposal to disallow the Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00579] (see [Bulletin 345](#)) was further debated and defeated on 24 August. However, the [Scrutiny of Delegated Legislation Committee](#) has reported concerns about the instrument, indicating an intention to give notice of its own disallowance motion on 6 October.

That committee has also flagged concerns about the Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020 [F2020L00572]. Previous deferrals had been made by primary legislation and the committee questioned the rationale for proceeding by determination given that regular sittings had resumed. The chair lodged a disallowance notice, which is set down for consideration in October.

On 26 and 31 August the Senate considered, but ultimately rejected, a proposal to disallow the Industry Research and Development (Bankable Feasibility Study on High-Efficiency Low-Emissions Coal Plant in Collinsville Program) Instrument 2020 [F2020L00772]. The instrument prescribes the feasibility study under s. 33 of the *Industry Research and Development Act 1986*, enabling the Commonwealth to enter into contracts, funding agreements and other arrangements in respect of the study. A further notice to disallow the instrument is set down for November.

Legislation

On 24 August the Senate resolved not to insist on the amendment it attached to the Treasury Laws Amendment (2020 Measures No. 2) Bill at the end of the June sittings, relating to financial reporting obligations: see [Bulletin 345](#). The motion to “not insist” was carried on the voices, although the Hansard and Journals records indicate that a vote would likely have been equally divided. In those circumstances, the amendment lacks majority support and the bill proceeds without it. Technically, with another equally-divided vote, the proponents of the amendment could have caused a stalemate by declining to adopt the report of the committee of the whole that considered the matter: see [Bulletin 237](#), Odgers’, 14th ed. p. 342, [Disagreement of House with Senate amendments](#). Senator Patrick again indicated he would continue to pursue the matter.

Seventeen government bills passed the Senate, five with amendments. The key measures dealt with included:

- a further [coronavirus economic response bill](#), extending the JobKeeper payments program into 2021, with changes to payment rates and criteria announced in July to be implemented by the Treasurer under the programs rules
- an [omnibus electoral matters bill](#), with the Senate debate focused on changes to political donations laws
- bills establishing a [payment times reporting scheme](#), requiring large business and government enterprises to report twice a year on their payment terms and practices for their small business suppliers

On 3 September a time management motion – implemented amicably, despite the opposition of some parties on the crossbench – saw debate on two bills on [citizenship](#) and on [cattle export charges](#) “guillotined”, with the questions on their remaining stages put after a short period for debate.

Reports tabled

Ten reports were tabled during the sitting period, among them the [interim report](#) of the Select Committee on Financial Technology and Regulatory Technology, which made 32 wide ranging recommendations and considered the technology changes and reforms being driven by the COVID-19 pandemic.

The Environment and Communications References Committee tabled a [report](#) into the future of Australia Post's service delivery on 25 August making three recommendations, the first of which was directed at all Australian Government entities, including Australia Post, to provide training for senior staff and officials to ensure they meet their responsibilities to the Senate and its committees, affirming the "proper processes for raising claims of public interest immunity" and "the requirement to specify the *actual harm* from the disclosure of information."

Inquiries

Nine packages of bills were referred as a result of the Selection of Bills report on 3 September. That report, and amendments made in Senate debate, resolved an impasse over the reference of substantial legislation on higher education and on the establishment of a Commissioner for Defence and Veteran Suicide Prevention. Both bills were referred, although disagreement about reporting dates persisted. Another substantial bill, rewriting the EPBC framework and introducing a "single touch" approval process was not referred, with a proposal to do so defeated on an equally-divided vote. The government resisted the reference on the basis of an inquiry into an earlier incarnation of the bill.

An inquiry on the management of the Department of Parliamentary Services was also referred to the Finance and Public Administration Legislation Committee.

Select committees

The Select Committee on the Aboriginal Flag was established on 3 September, consisting of four government senators, two from the opposition and one from the crossbench. Notably, the Senate appointed Senator Lidia Thorpe as a member of the committee contingent on her being chosen as a Senator to fill the vacancy in the representation of Victoria. As the term of a senator filling a casual vacancy commences when they are chosen by the appointing body, senators can be appointed to, and participate in the proceedings of committees before being sworn in.

A Greens proposal for a select committee related to government grants was defeated on equally divided votes, and a proposed select committee on tobacco harm is listed on the *Notice Paper* for consideration on 6 October.

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**