



Procedural Information Bulletin

8 February 2021 • No. 351

For the sitting period 2 to 4 February 2021

Senators and the Senate

Senator Small made his first speech on 3 February. The Senate resumed its practice of locking the doors for divisions, which had been suspended from the onset of the COVID-19 pandemic as part of a suite of hygiene and social distancing measures.

The Senate also commenced recording its divisions on tablet devices, and reporting the results in real time on the Dynamic Red and elsewhere on its website.

The rules allowing senators to participate in proceedings by video link were not adopted, as no senator sought to use the service. Despite a “lockdown” in Perth and adjacent regions, Western Australian senators were able to attend parliament in accordance with arrangements agreed between the Parliament and territory health officers, including a COVID-19 test regime.

Legislation

The Senate passed a raft of government bills. A [bill introducing a mandatory credit reporting regime](#) passed with government amendments to delay its commencement and provide greater protections for consumers in respect of their personal information in relation to reports containing financial hardship information.

There was feisty debate on the Customs Amendment ([Product Specific Rule Modernisation](#)) Bill 2019. The bill allows changes to Product Specific Rules (PSRs) determined by the World Customs Authority under 5-yearly reviews to be automatically incorporated into Australian Customs law. For the six free trade agreements (FTAs) covered by the bill, this process would replace the current requirement for such changes to be implemented by way of disallowable regulations. The Scrutiny of Bills Committee, in its [Digest No. 9 of 2019](#), had noted “that the removal of the PSRs from regulations may limit the opportunity of Parliament to review and scrutinise the content of the PSRs”. In debate, the representative minister emphasised that an earlier bill to implement the same changes for another tranche of FTAs had passed without demur, that the PRS changes were technical in nature, and that the Senate had never sought to disallow such regulations. Opponents of the measures highlighted the diminution of parliamentary scrutiny and the risks of outsourcing parliament’s legislative responsibilities to the executive and to bureaucrats. Opposition amendments to retain the use of disallowable regulations were narrowly defeated and the bill passed without amendment.

In the week preceding the sittings, the Scrutiny of Bills Committee presented its [Digest No. 1 of 2021](#), which included comments on the Migration and Citizenship Legislation Amendment ([Strengthening Information Provisions](#)) Bill 2020. The bill seeks to establish a framework to protect the disclosure of

confidential information provided by intelligence and law enforcement agencies where the information is used in relation to decisions to refuse or cancel a visa on character grounds, or decisions to refuse, cancel, revoke or cease citizenship. The bill proposes to extend the prohibition on disclosure of such information to applicants in judicial review proceedings where a court determines that disclosing the information would create a real risk of damage to the public interest. Breach of the relevant provisions would be an offence with a maximum penalty of imprisonment for 2 years.

In addition, provisions of the bill seek to provide that ministers and officers must not be required to produce or give such information in evidence to 'a parliament or parliamentary committee'. In its Digest, the Scrutiny of Bills Committee observed that the explanatory memorandum to the bill does not at all address why such a provision is considered necessary. The committee also noted that the Senate already has well-established processes for ministers and officers to make claims for public interest immunity where they consider there are grounds for withholding information from the Senate or a Senate committee. The committee considered that it was inappropriate to prescribe a blanket prohibition on disclosure to Parliament and requested that the prohibition be omitted from the bill. The committee will consider the minister's response to its request in a future Scrutiny Digest. In the meantime, the Legal and Constitutional Affairs Legislation Committee has commenced an inquiry into the bill, which is due to report by 10 March 2021.

Questions and explanations

After question time on 2 February, Senator Rice asked the Leader of the Government under standing order 74(5) to explain why an overdue question on notice had not been answered. The minister responded by tabling an answer to the question. Once a question is answered, the procedure no longer operates, so it was not open to the senator to move a motion under the standing order: see [*Odgers' Australian Senate Practice, 14th ed., at p.624.*](#)

Disallowance

On 4 February, the Chair of the Scrutiny of Delegated Legislation Committee [highlighted](#) the committee's ongoing concerns about ASIC's use of legislative instruments to provide for exemptions from, and modifications to, primary legislation. The committee considers that such instruments should operate for no more than three years, to ensure a minimum degree of regular parliamentary oversight. The committee has therefore requested that ASIC amend five instruments, on which the committee has already given notices of motion to disallow, to limit their duration. In its [Delegated Legislation Monitor No. 2 of 2021](#), the committee noted that the Treasurer's response to this request will inform the committee's consideration of whether to withdraw the disallowance notices. The disallowance period for the first of the instruments expires on 22 February.

Reports tabled

The Foreign Affairs, Defence and Trade References Committee tabled a [report](#) on issues facing diaspora communities in Australia. The report contains 18 recommendations, among them that government consider the development of a new national anti-racism framework which includes comprehensive consultation with diaspora communities.

Inquiries

Five bills were referred for inquiry and report as a result of the Selection of Bills Committee [Report No. 1 of 2021](#).

The Legal and Constitutional Affairs Legislation Committee resolved to undertake an inquiry into the [National Emergency Declaration Act 2020](#) which commenced on 16 December 2020. Section 18 of the Act provides that the Senate Standing Committee on Legal and Constitutional Affairs, or such other committee constituted under a resolution of the Senate, review its operation report to the Senate by 30 June 2021.

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**