



# Procedural Information Bulletin

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For the sitting period 15 to 25 February 2021

## COVID-19 and the Senate

The rules allowing senators to participate in proceedings by video link were adopted for the first sitting week, after a “lockdown” was implemented in Victoria. Again, however, senators and members from the affected state were able to attend parliament in accordance with arrangements agreed between the Parliament and Australian Capital Territory health officers.

In March last year, the Senate resolved that its committees should be able to extend the duration of their own inquiries, giving them more autonomy over their work in the early stages of the pandemic when it was unknown how often the parliament might meet. That authority was revoked by resolution on 24 February, so that extensions of time are again a matter for the Senate.

## National Apology to the Stolen Generations

On 15 February the sitting of the Senate was suspended so that senators could attend the House of Representatives to hear statements on the 13<sup>th</sup> anniversary of the National Apology to the Stolen Generations. The Prime Minister’s statement on the matter was later tabled and debated in the Senate. The government also announced that the annual Closing the Gap statement, reporting against revised targets adopted last year, would be made in the second half of the year.

## Legislation

Two private senators’ bills passed the Senate during the fortnight, on 15 and 22 February, respectively. The first, introduced by Senator Steele-John, [extends privacy protections](#) for individuals giving evidence to the Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disability. The Attorney-General had announced in October 2020 the government’s intention to introduce a similar bill in the Autumn sittings this year. However, as noted in debate on a related order for documents, that bill has not yet materialised. The second bill, from Senator O’Neill, seeks to promote [fairness in franchising](#) by extending mediation and arbitration arrangements.

Twelve government bills also passed the Senate; three with amendments and another with amendments and requests. Among those, the bills to [merge the Family Court and the Federal Circuit Court](#) passed on 17 February after robust debate, extended hours and a limitation of debating time. Proponents argued that the changes would increase efficiencies in caseload management and reduce delays, while critics highlighted concerns about the loss of specialisation in family law and reductions in future funding. Government amendments provided for a minimum number of judges to hold office under the proposed Act, replacing a clause providing that the number could be set by regulation. The supplementary explanatory memorandum relating to the amendments indicated that the change would have no financial impact. Opposition amendments sought to increase that number, so that the

proposed minimum could be no lower than the number currently appointed, which presumably would have been cost-neutral compared with existing funding arrangements. Australian Greens amendments seeking to increase the number further were treated as requests, on the basis that they would increase expenditure under the appropriation clause contained in the bill. Section 53 of the Constitution prevents the Senate amending “any proposed law so as to increase any proposed charge or burden on the people”, however, the Senate can request the House to make such a change. In any event, only the government amendments were successful.

A bill to [reunite more superannuation](#) from eligible rollover funds with members’ active accounts passed with government amendments deferring its commencement and with requests for amendments providing for additional circumstances in which the Taxation Commissioner must make payments to eligible recipients. These were treated as requests under Senate precedent because they would cause additional expenditure under a standing appropriation.

The government’s [Media Bargaining Code](#) legislation passed the Senate on 24 February after the government introduced last-minute amendments reflecting negotiations with the world’s largest social media juggernaut, and despite concerns raised by crossbench senators that the bill might not adequately provide for smaller media organisations and those in regional areas.

A bill implementing new [transport security arrangements](#) to deter serious crime was referred to a second short committee inquiry, by way of a motion under [standing order 115\(2\)](#). Such referrals may be moved without notice after a bill has been read a second time and are subject to the same time limits as other motions for the referral of bills, ie, a 30 minute debate with speakers allocated 5 minutes each.

## Questions, orders and explanations

On 18 February a motion was proposed to require the Minister for Defence to provide an explanation in relation to allegations of a sexual assault occurring in her office in Parliament House in 2019. While the motion was not passed, the Minister made a statement by leave on the matter before question time on the same day. Time was set aside by agreement on the next day of sitting to consider the statement. The allegations and the government’s responses to them were the subject of questions throughout the fortnight, as well as an order for production of documents to discover the terms of reference of two of the internal reviews established in the wake of the allegations. The government responded to that order on 25 February.

Several other orders for documents were made, including on:

- the drafting of government legislation to extend confidentiality protections for people before the Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disability (made on 17 February; a response on 22 February sought more time to respond and foreshadowed possible public interest immunity claims)
- the final evaluation report of the University of Adelaide in relation to the Cashless Debit Card, (ordered on 17 February, with the report provided on 22 February, some 3 months after related legislation passed the parliament: see [Bulletin 350](#))
- hundreds of unanswered questions from the 2020-21 Budget estimates round (22 February, the response to which on 24 February also noted the hundreds of questions that *had* been answered)

- the Future Submarine program (22 February, met with a public interest immunity claim) and Future Frigates program (24 February, documents sought by 4 March).

An unusual order made on 25 February requires the Department of Defence to provide expenditure forecasts for capital acquisitions to the Parliamentary Budget Office, and provides for that office to handle the documents on a strictly confidential basis and to advise the Senate by 9 March whether the order has been complied with.

As always, the cumulative list of orders and responses can be found on the [Senate’s business pages](#).

## Unanswered questions and unmet orders

The fortnight also saw some use of processes designed to elicit explanations from ministers for failing to answer questions or to comply with orders requiring the production of documents.

On several occasions senators sought explanations under standing order 74(5) for questions remaining unanswered after the 30-day deadline, and took advantage of the opportunity to debate those matters. On 24 February the Minister – who had not received the usual notice that an explanation would be sought – was unable to provide one, allowing the relevant senator to move that the answer be provided by a particular date. The minister tabled the answer as the debate wound up, making the resultant order somewhat superfluous.

On 23 February Senator Patrick sought an explanation under standing order 164(3) for the government’s failure to comply with an order for documents concerning Australia’s naval shipbuilding capacity. The order required the documents to be provided to the Economics References Committee [see [Bulletin 349](#)], however the committee had not reported back to the Senate. The Defence Minister responded that the government had complied, but also indicated that discussions were underway with the committee about access to the documents. In that sense, it was unclear whether the order had been met. Moreover, earlier correspondence from the Minister had indicated that the documents would be provided with “appropriate redactions”, but did not identify the grounds upon which the redactions would be made. The Senate expects that any claim to withhold information will be justified on established grounds (see *Odgers’ Australian Senate Practice*, chapter 19, under [Orders to ministers and public interest immunity claims; resolution no. 35; continuing order no. 10](#)). These matters were canvassed in a short debate on the minister’s response. The following day the Leader of the Government tabled a letter indicating the grounds for the redactions.

In some ways, standing order 164(3) has been overtaken by changes in practice. It gives senators procedural rights to seek explanations for non-compliance with orders, however, such explanations are now routinely provided: see Procedure Committee, [second report of 2015](#); Odgers (updates to 30 June 2020), chapter 18 under [Guidance on responding to orders](#). The standing order is not regarded as providing an opportunity to test or reject public interest immunity claims that have been made, and its procedures are not available where the order has apparently been met: see [Bulletin 346](#).

## Formal motions

The “discovery of formal business” process in [standing order 66](#) provides a fast-track method of dealing with motions – ostensibly without amendment or debate – where no senator objects to proceeding this way. Temporary orders constraining the use of the procedure were adopted in June 2020, to the consternation of the crossbench, and are currently under review by the Procedure Committee: see [Bulletin 345](#). Throughout the sittings, some crossbench senators protested those constraints by

objecting to the use of the procedure for many of the motions listed on any given day. Generally, those motions proceeded after standing orders were suspended to enable their consideration. This meant that even uncontentious motions could not pass without the Senate first dividing on the question whether they ought be considered at all.

## Disallowance and the scrutiny of delegated legislation

The Scrutiny of Delegated Legislation Committee has been particularly active recently in giving “protective” notices of motion to disallow instruments. These extend the time for the committee to negotiate with ministers about its concerns and protect its right to move disallowance if required. When the committee is satisfied, it withdraws the notice. Generally, a senator who has given notice of a motion may withdraw it at any time. However, a senator seeking to withdraw notice of a disallowance motion must inform the Senate they intend to do so. This “notice of intention” allows another senator to take over the notice of motion before it is withdrawn: [standing order 78](#). The chair of the committee gave 10 such notices during the fortnight and withdrew 14, most of which were given during previous sitting periods.

Occasionally a senator will seek to amend notice of a disallowance motion to reduce its scope. This is treated as a proposal to withdraw part of the notice: notice of intention is required so that other senators may consider whether to take over the original. As with intention to withdraw, the timeframe for making an amendment usually runs from one sitting day to the next. For instance, on 17 February the chair of the committee gave notice of her intention to amend a notice so that it would cover only Part 3 of the instrument the original motion sought to disallow. The next day’s *Notice Paper* recorded the notice of intention to amend and after that the notice was shown in its amended form. The amendment itself is made in accordance with [standing order 77](#), which allows a senator to amend a notice in writing, so there was no need for the Chair to announce the amendment again on the day it takes effect.

If it is the final day for dealing with a disallowance motion under the *Legislation Act 2003*, a notice of intention to withdraw may have effect for a later hour of that day: [standing order 78\(2\)](#). There was an example of this on 22 February, when the chair gave notice in the morning of her intention to withdraw a disallowance notice that afternoon.

The following day, the Senate considered a disallowance motion relating to court fees under a time limited debate, which has become de rigueur for motions approaching their expiry date. A second motion listed for consideration was withdrawn, pursuant to the requisite notice, before it could be called on.

On 23 February the Senate also adopted a resolution encouraging ministers and agencies to engage with the committee in a timely manner and calling on shadow ministers to actively consider its comments.

## Inquiries

Eight bills were referred for inquiry and report as a result of the Selection of Bills Committee Reports [No. 2](#) and [No. 3 of 2021](#).

As noted earlier, the [Transport Security Amendment \(Serious Crime\) Bill 2020](#) was referred to the Rural, Regional Affairs and Transport Legislation Committee for inquiry and report by 11 March 2021. This bill has previously been examined by the Legal and Constitutional Affairs Legislation Committee, which tabled its [report](#) on 25 March 2020.

Several other inquiries were also established: [family and partner visas](#), referred to the Legal and Constitutional Affairs References Committee for report by 10 August 2021; matters concerning [Australia Post](#), to the Environment and Communications References Committee for report by 30 April 2021; and [funding for public research into foreign policy issues](#), to the Foreign Affairs, Defence and Trade References Committee for report by 17 June 2021.

## Reports tabled

Thirteen reports were tabled during the sitting period, including reports on the annual reports of portfolio departments and agencies from each of the eight legislation committees, examined under standing order 25(20).

A [report](#) on nationhood, national identity and democracy was tabled by the Legal and Constitutional Affairs References Committee, making 18 recommendations. The Joint Committee on Law Enforcement tabled a [report](#) on an Australian Standard for training and use of privately contracted security and detection dogs.

The Senate Select Committee on COVID-19 tabled its [second interim report](#), which details “multiple instances where important information sought by the committee has been withheld by government on grounds of public interest immunity”. The committee highlights concerns that the government has not properly adhered to the [2009 order](#) for making and determining such claims, and finds that they “do not provide adequate reasoning to justify withholding the information”. The committee recommends that the Senate order the production of the documents. Additional comments by Coalition members note that “the **relatively few disagreements between the committee and the government about a handful of public interest immunity claims**” should be viewed in the light of the extensive cooperation and transparency by government departments appearing before the committee and answering questions. Consideration of the recommendations was made a business of the Senate order of the day for 15 March 2021.

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## 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](http://www.aph.gov.au/senate)

Inquiries: **Clerk’s Office (02) 6277 3364**