



Procedural Information Bulletin

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For the sitting period 11 to 13 May 2021

Address to Her Majesty the Queen

The sitting week commenced with a condolence motion on the occasion of the death of His Royal Highness the Prince Phillip, Duke of Edinburgh, after which proceedings were suspended as a mark of respect. In accordance with long tradition, the motion took the form of an address to Her Majesty Queen Elizabeth II, which was duly delivered to the Governor-General: s.o. 171 and 172.

Budget bills

After the 2021-22 Budget was handed down, particulars of expenditure contained in the budget appropriation bills were referred for examination in the up-coming round of estimates hearings. In a procedural sense, estimates replaces the committee of the whole stage of the bills. As a consequence, appropriation bills examined during estimates do not proceed to a committee stage unless senators have circulated relevant amendments or requests for amendments, in which case debate is confined to the purpose of any amendment or request moved: s.o.115(4) and (5). On this basis, the chair denied a request to have the additional appropriation bills for the current financial year considered in committee. The bills, which largely fund measures contained in December's Mid-Year Economic and Fiscal Outlook document, were passed on 12 May.

Accompanying those bills was consideration of the [Report on the Advances to the Finance Minister](#) (AFM) under the annual Appropriation Acts for 2019-20. This report is tabled each year, and referred to committees for their additional estimates round. Consideration of the report in the Senate is made an order for the day those committees report. When the order is called on a minister moves that the Senate approve the advances. As noted in *Odgers' Australian Senate Practice* under [Advances to the Finance Minister](#), this motion “does not have the effect of authorising the expenditure, which is authorised by the original appropriation. Rejection of such a motion would signify dissatisfaction with [the report] as an accountability document”: 14th ed., p.396. The Scrutiny of Bills Committee has long been critical that determinations made under the AFM are not disallowable, with the issue also being picked up in the final report of the Scrutiny of Delegated Legislation Committee's inquiry into the [Exemption of delegated legislation from parliamentary oversight](#).

Scrutiny of the advances has formed part of Senate practice for decades, although they are rarely debated. None of the additional estimates reports this year made any substantive mention of the scrutiny of the report, despite the inclusion of extraordinary AFM provisions in 2019-20 and 2020-21 authorising the appropriation of billions of dollars: see [Bulletin 342](#) and the Scrutiny of Bills Committee's [Scrutiny Digest 5](#) and [Scrutiny Digest 6](#) of 2020. The motion proposed on 12 May was [agreed to](#) without debate.

Legislation

While the parliamentary focus was on the presentation of, and response to, the Budget, the Senate also dealt with other elements of the government's legislative program.

A bill providing for the [automatic mutual recognition of occupational qualifications](#) across Australian jurisdictions passed with government amendments, after an opposition proposal for a short committee inquiry was defeated on an equally divided vote. State and territory governments had entered an intergovernmental agreement on the matter under the auspices of the "National Cabinet", which is the new name for the old Council of Australian Governments.

An enduring challenge with legislation implementing intergovernmental agreements is that it is commonly presented as a *fait accompli*; brooking no legislative amendment. Similar concerns were highlighted a quarter of a century ago in a position paper on the [Scrutiny of National Schemes of Legislation](#) developed by representatives of Australian legislative scrutiny committees:

Effective parliamentary scrutiny has been threatened because of the rise of national schemes of legislation which emerge from such bodies as the Council of Australian Governments (COAG) and various Ministerial Councils. Expressed at its simplest level, such councils agree to uniform legislation, usually in closed session, and then proceed through the participating Ministers to sponsor Bills through individual Parliaments, often with the message that the Bills cannot be amended for fear of destroying their uniform nature.

In this case, the Scrutiny of Bills Committee also commented on a novel delegation of power. Under the bill, state ministers are empowered to make non-disallowable Commonwealth legislative instruments (for instance, to exempt particular occupations from the legislative scheme) without any apparent parliamentary constraint at either the Commonwealth or state level: see [Scrutiny Digest 6](#) and [Scrutiny Digest 7](#) of 2021.

But I digress.

Six bills were passed on 13 May under a guillotine. The Australian Greens had sought to send one of those bills – a migration bill dealing with [Australia's protection obligations to non-citizens](#) – to a legislation committee for examination, however, it passed with the support of the major parties and other members of the crossbench. [See the Human Rights Committee [Scrutiny report no. 5 of 2021](#) for analysis of the issues involved.] A bill to [extend the Northern Australia Infrastructure Facility](#) for 5 years and expand its functions was passed with two minor government amendments, which were duly accepted in the House later in the day. The Opposition and the Greens each proposed a range of amendments, none of which found support. The other four bills were less contentious, and passed without amendment.

On 11 May the Senate also agreed to the amendment proposed by the House of Representatives to the bill to protect the confidentiality of documents provided to the independent review of parliamentary workplaces: see [Bulletin 353](#). The amendment ensures that the bill does not affect existing FOI access rights.

Possible interference with committee inquiry

On 12 May the President made a statement granting precedence to a matter of privilege raised by Senators Gallacher and Patrick relating to an Economics References Committee inquiry into Australia's sovereign shipbuilding capability.

A matter of privilege proposes the reference of a matter to the Committee of Privileges, whose main function is to investigate conduct that is apprehended to obstruct the work of the Senate. This may involve allegations of interference with the functions of the Senate or its committees, or with senators undertaking their duties. The committee has often cited the protection of the Senate's sources of information as its highest duty, and this will commonly involve protecting witnesses before committees against interference or penalty. In this case, the alleged interference is said to arise through the refusal of officers and ministers to provide information to the references committee.

In raising the matter, Senators Gallacher and Patrick outlined numerous occasions on which they said the Department of Defence, the Secretary of Defence, and the former Minister for Defence have declined or refused to provide documents to the committee in response to committee requests and Senate orders, contending that "the committee's ability to progress the inquiry has been severely and deliberately impeded by the Department."

The letter raised three grounds on which the conduct complained of may amount to an improper interference with the functions of the Senate and should be investigated as a possible contempt, namely:

- improper interference with the free exercise by the committee of its authority or functions (contrary to privilege resolution 6(1))
- disobedience of a lawful order of the Senate (contrary to resolution 6(8)) and
- refusal or failure to produce documents in accordance with an order of the Senate (contrary to resolution 6(13)).

The question whether the claimed conduct warrants investigation as a possible contempt is not one for the President, but for the Senate.

In disputes about the production of documents, the Senate has generally preferred "political" or "procedural" remedies – such as censure motions, debating explanations for non-compliance, or deferring consideration of legislation – rather than seeking to enforce its orders through its contempt jurisdiction. Nevertheless, Odgers makes it clear that:

The principal remedy which the Senate may seek against an executive refusal to provide information or documents in response to a requirement of the Senate or a committee is to use its power to impose a penalty of imprisonment or a fine for contempt, in accordance with the *Parliamentary Privileges Act 1987*. [14th ed., p. 672]

That passage goes on to note, however:

...practical difficulties involved in the use of [the contempt] power, particularly the probable inability of the Senate to punish a minister who is a member of the House of Representatives, and the unfairness of imposing a penalty on a public servant who acts on the directions of a minister.

The matter is listed for the Senate's consideration on 15 June.

Disallowance and delegated legislation

While most of the work of the Scrutiny of Bills Committee relates to bills before the Parliament, it can also consider Acts of Parliament against its scrutiny principles s.o.24(1)(a). On 12 May the committee tabled its [Scrutiny Digest 7](#) of 2021, which included commentary on the provisions in the *Biosecurity Act 2015* that exempt delegated legislation made under the Act from disallowance. Among other things, the committee expressed the view that significant measures, such as the recent India travel ban temporarily preventing citizens from entering Australia, should be subject to disallowance.

This was echoed in a speech by the Chair of the Scrutiny of Delegated Legislation Committee on 12 May, in support of the proposed expansion of the remit of that committee to include the scrutiny of instruments that are exempt from disallowance; a matter scheduled to come before the Senate on 16 June: see [Bulletin 353](#).

Additional estimates hearings

Three legislation standing committees held additional estimates spill over hearings before the sitting period: Community Affairs, Legal and Constitutional Affairs, and Environment and Communications.

References

Two bills were referred for inquiry and report as a result of [report no. 5 of 2021](#) of the [Selection of Bills Committee](#). An inquiry concerning the adequacy of the Disability Support Pension was referred to the [Community Affairs References Committee](#) for report by 30 November 2021.

The Senate also passed the usual motion referring bills introduced in the House during Senate estimates to legislation committees for inquiry, where they contain substantive provisions commencing on or before 1 July 2021. Committees may determine by unanimous decision that there are no substantive matters that require examination, and report this to the Senate.

Reports

The Environment and Communications Legislation Committee tabled its [report](#) on the Environment Protection and Biodiversity Conservation Amendment (Regional Forest Agreements) Bill 2020.

The Parliamentary Joint Committee on Law Enforcement tabled a [report](#) on public communications campaigns targeting drug and substance abuse, making four recommendations, including that the Australian Government support research into the efficacy of addiction treatment programs in reducing drug-related crime recidivism.

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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