



Procedural Information Bulletin

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For the sitting period 8 to 10 February 2022 and additional estimates hearings 14 to 18 February 2022

Senate and senators

The unusual sitting pattern for the year – determined around the government’s chosen budget date and likely timing for a federal election – saw the Senate sit for a 3-day Autumn sitting period, then adjourning until late March.

The Senate adopted its now familiar rules allowing senators to participate in proceedings via video link, with senators reiterating that neither the government nor opposition favour the continued use of the facility other than when senators are prevented from attending the Senate for reasons connected to the COVID-19 pandemic. When the eligibility of senators to participate remotely was raised on 10 February, the chair indicated that, by seeking to use the system, senators were representing to the Senate that they met the criteria for doing so, and it was a matter for individual senators to account for their circumstances.

Senator Greg Mirabella – chosen by the Victorian Parliament on 2 December 2021 to fill a casual vacancy – was sworn on the first sitting day, and gave his first speech the following day.

The Senate also made an address to Her Majesty the Queen, marking her Platinum Jubilee.

‘Set the standard’ report and recommendations

The parliament began implementing recommendations made by the Human Rights Commission Review of Commonwealth Parliamentary Workplaces (the [Jenkins Review](#)): see [Bulletin 360](#). Proceedings on the first sitting day commenced with a statement of acknowledgement by the President (and by the Speaker in the House of Representatives), and statements of acknowledgement and apology from party leaders in both Houses. The acknowledgement was crafted by a cross-party leadership group comprising government, opposition and crossbench members and senators, together with an independent chair. The review had proposed that such a group oversee the implementation of its recommendations.

On 10 February the Senate passed a resolution proposing to appoint a joint select committee to develop ‘codes of conduct for Commonwealth parliamentarians, parliamentary staff, and parliamentary workplaces to ensure safe and respectful behaviour’. The House agreed to the resolution on 14 February. Evidence at estimates hearings before the Finance and Public Administration Legislation Committee on the same day canvassed the work of a number of other groups, principally led by the Department of the Prime Minister and Cabinet, including groups tasked with clarifying the operation of the *Work Health and Safety Act 2011*, and reviewing physical infrastructure, policies and practices to promote access and inclusion.

The Parliament also passed a [Parliamentary Workplace Reform bill](#), to improve some employment settings for parliamentarians' staff and clarify the application of fair work; work, health and safety; and discrimination laws.

Legislation

Most government business time was spent on a [bill to legalise mitochondrial donation](#), by way of a staged process including a long period for clinical trials. It was made clear in debate that senators from around the chamber were exercising conscience votes on the bill and proposed amendments. Although additional debating time was allocated on Tuesday and Wednesday evening, the committee stage was not finished before the end of the sittings. Both the government and opposition made statements indicating that they would not support a guillotine motion in relation to the bill, given that it was being dealt with as a matter of conscience.

A number of other government bills were, however, passed under a short guillotine on 10 February, including the parliamentary workplace reform bill mentioned above, and a trio of electoral bills; one passed with opposition amendments.

The government program listed its religious discrimination bills for debate in the Senate on 9 February. However, the government did not seek to bring those bills on after a related bill – the [Human Rights Legislation Amendment Bill 2021](#) – was amended in the House against the government's wishes, with five government backbench members crossing the floor. The government had voted against the amended bill at the third reading stage in the House, but did not have the numbers to defeat it. It subsequently opted not to support its own procedural motion in the Senate, which would have allowed immediate debate on the package. Instead, the bills will appear on the Senate Notice Paper for the Budget sittings, although it has been reported they are unlikely to proceed at that time.

Proxy advice regulations disallowed

On 10 February the Senate disallowed the [Treasury Laws Amendment \(Greater Transparency of Proxy Advice\) Regulations 2021](#). The explanatory statement for the regulations says they were aimed at strengthening transparency and oversight of proxy advice – a type of financial service – but they had been criticised by the industry super sector, in particular, as lacking justification. The Scrutiny of Delegated Legislation Committee, without commenting on the policy merits of the changes, had also expressed various concerns, including that it would be more appropriate for such significant matters to be dealt with by way of primary legislation (see [committee correspondence](#)). Only government senators supported the regulations, with all non-government senators present voting for their disallowance.

Orders and explanations

Four orders for documents were made during the week. One was complied with, one partially complied with, and more time was sought to respond to the others. The cumulative list detailing orders and responses can be found on the [Senate's business pages](#). On 8 February the Senate supported a motion from Senator Patrick reiterating orders that the government produce information withheld on the basis of a claimed connection to National Cabinet. The Senate resolved last year to reject public interest immunity claims made on the basis that National Cabinet material falls within the ambit of cabinet confidentiality: see [Bulletin 360](#). In agreeing to the motion again requiring the contested information to be produced, the Senate did not support procedural restrictions on several ministers proposed in the final part of the motion.

On 10 February the Leader of the Government was required to attend the Senate to explain two matters, relating to overdue responses to reports of environment and communications committees and to the performance of the Minister for Senior Australians and Aged Care Services.

The previous day he had also been called upon to explain overdue answers to estimates questions, under standing order 74(5). Each explanation was debated. The theory is that these practices provide both an opportunity for accountability and a penalty on government business time.

Inquiries

Four bills were referred as a result of amendments to Selection of Bills Committee Report no. 1 of 2022. In addition, the Australian Research Council Amendment (Ensuring Research Independence) Bill 2018 (a private senator's bill) was referred to the Education and Employment Legislation Committee.

As noted above, the Houses resolved to establish a Joint Select Committee on Parliamentary Standards. The resolution included a provision allowing committee members to be appointed and discharged when the Parliament is not meeting. The provision – based on a formula commonly used in the appointment of House committees – is a departure from normal Senate practice, which requires the Senate's agreement to changes in membership, however, it may have a place in circumstances (as here) when the Senate's sitting pattern might otherwise inhibit the ability of the committee to commence its work. Although the resolution is silent on the matter, presumably the Senate's procedures for determining crossbench representation apply. This involves notifying the President of agreement about such representation, with any disagreement settled in the Senate by ballot. The resolution also allows the appointment of participating members.

Reports

The Joint Committee on Law Enforcement tabled a report on the Criminal Code Amendment (Sharing of Abhorrent Violent Material) Act 2019. The Select Committee on Job Security tabled its fourth interim report, making 20 recommendations. The Senate agreed to a recommendation that the committee be extended to 30 March to allow the committee to consider possible privilege matters related to the treatment of seasonal workers who gave evidence at a public hearing.

Public interest and the constitutionality of laws

A report by the Economics Legislation Committee on the Corporations Amendment (Improving Outcomes for Litigation Funding Participants) Bill 2021 was presented out of sitting on 3 February. The bill responds to seven of the recommendations made in a report presented in November last year by the Parliamentary Joint Committee on Corporations and Financial Services. Both committees received evidence – including evidence from the Law Council of Australia – that questioned the constitutionality of the bill. During each inquiry the Attorney-General's Department raised public interest immunity claims against providing legal advices sought by the committees, on the basis of a supposed 'long-standing convention', repeatedly rejected by the Senate: see, for example, [Bulletin 358](#). The joint committee rejected the claim, while the legislation committee seemed unpersuaded.

Officers from the department also declined to provide information about the constitutional head of power supporting the bill, again making public interest immunity claims. They argued that providing such details to a parliamentary committee – even as in camera evidence – might effect a waiver of legal professional privilege. It must be doubted that this argument has any basis: evidence given to a committee is protected by parliamentary privilege, restraining its use before the courts. In any case, the Senate does not consider legal professional privilege an acceptable ground for a public interest

immunity claim, as opposed to possible prejudice to actual or pending legal proceedings: *Odgers' Australian Senate Practice*, 14th ed., pp 662, 668.

The situation was described by the Economics Legislation Committee, with masterful understatement, as ‘an unsatisfactory state of affairs’, while the dissenting report from Opposition senators said the argument was ‘self-evidently ridiculous’. The committee asked the department and the Attorney-General to reflect on the matter further before the bill is debated in the Senate. It is surely untenable to argue that it is not in the public interest for the parliament to know the basis of the laws it is being asked to make.

Additional estimates

Like the previous four rounds of Senate estimates, the examination of proposed expenditure of government departments and authorities for the purposes of additional estimates proceeded in a COVID-safe manner, implementing public health measures designed to minimise the risk of transmission of COVID-19. This again included some senators and witnesses participating via videoconference.

Consistent with recent estimates hearings, there were few claims of public interest immunity. However, a number of witnesses did take questions on notice in order to consider whether to refer them to ministers to consider making such claims. There was considerable discussion of previously advanced PII claims, including in the Community Affairs Legislation Committee hearing related to the income compliance program: see [Bulletin 358](#).

Other areas of examination involving public funds and administration that received close attention included:

- Spending on election advertising
- COVID-safe planning for the 2022 federal election
- Allocation of grant funding by the Australian Research Council
- Retention and an anticipated national shortage of teachers
- Insecure work in universities
- Manufacturing of rapid antigen tests in Australia
- Co-design of an Indigenous Voice
- Measures designed to meet ‘Closing the Gap’ targets
- Animal welfare standards related to live export
- Funding for agribusiness water infrastructure
- Accommodation costs associated with quarantine for advisers and officials following international travel
- Issues with the design of the Hunter class frigates

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**