



Procedural Information Bulletin

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For the sitting period 28 to 30 March 2022 and
Budget estimates hearings 31 March to 8 April 2022

The Senate and senators

The Senate again met in sad circumstances, following the untimely death of Senator Kimberley Kitching, a senator for Victoria since 2016. The Senate was recalled ahead of its scheduled sittings for a condolence debate, after which the Senate adjourned as a mark of respect. The condolence ranged over many aspects of Senator Kitching's life and work, including her championing of human rights and the introduction of 'Magnitsky'-style sanctions, and her contributions to numerous Senate committees, most recently as Chair of the Foreign Affairs, Defence and Trade References Committee.

The recall was effected by a request to the President under standing order 55 from the Leaders of the Government and Opposition in the Senate, representing an absolute majority of senators. In accordance with practice, the request was made after consultation with the leaders of minor parties and independent senators: see Procedure Committee, [Second report of 2011](#).

The Senate met again on 29 March, having adopted the usual routine of business for Budget Day. On 30 March, the final Senate sitting for the Parliament, the routine was varied to allow some brief valedictory statements in relation to Senators Carr and McMahon, a guillotine to finalise proceedings on a raft of bills, and additional time to determine a bill on which parties were exercising conscience votes.

The two Houses of the Victorian Parliament met together on 6 April to choose Jana Stewart to fill the vacancy in the representation of the state arising following Senator Kitching's death. Under section 15 of the Constitution, a senator filling a casual vacancy serves for the balance of the term of the senator they are replacing; in this case, a term expiring on 30 June 2022. It is possible, but unlikely, that Senator Stewart will take her seat in the Senate before her term expires, with the Senate's calendar set aside when the parliament is prorogued prior to the election. Instead it may be that the senator will first take her seat after 1 July, presuming she is successful at the upcoming election.

Senators were invited to an address to the Parliament in the House of Representatives by the President of Ukraine, His Excellency Volodymyr Zelenskyy, on 31 March. This was the first such address to be delivered by video link.

Finally, the Prime Minister advised the Governor-General to prorogue the parliament and dissolve the House on 11 April 2022, 3 years to the day since the previous parliament was prorogued, setting the scene for an election for the House and half the Senate on 21 May. The date fixed for the return of the writs is 28 June. Under section 5 of the Constitution, the new Parliament must be summoned to meet within 30 days of that date.

Disallowance

The Senate's practices concerning the death of a sitting senator include the Senate considering a condolence motion then adjourning as a mark of respect. By convention and agreement, the Senate does not consider any other business. On 28 March, that practice came up against the immutable timetable for the disallowance of legislative instruments under the [Legislation Act 2003](#). Section 42(2) of the Act provides that an instrument is taken to be disallowed and repealed if, on the last day for determining a motion of disallowance, the motion has not been withdrawn or otherwise disposed of.

Three such motions in the name of the Chair of the Scrutiny of Delegated Legislation Committee were listed on the Notice Paper to be determined on the first day of the sittings.

The committee had indicated that it intended to withdraw two of those motions. The chair sought and was granted leave of the Senate to do so. By seeking leave, the chair avoided the two-step process for withdrawal of a disallowance notice set out in standing order 78, involving notice of intention to withdraw (enabling other interested senators to take over the notice) followed by a withdrawal on a later day, or a later hour of the day where – as here – it was the last day to determine the matter.

The committee had also indicated that it did not intend to withdraw the third motion, relating to the Australian Renewable Energy Agency (Implementing the Technology Investment Roadmap) Regulations 2021 [[F2021L01043](#)]. The Senate had disallowed an earlier iteration of the regulations (see Bulletin [356](#)) and considered – but not passed – proposals to disallow part of this subsequent iteration: Bulletins [357](#), [359](#). The earlier motions might be characterised as being initiated on policy grounds. The committee's motion came out of its technical scrutiny role, and particularly its concerns, detailed in the committee's Delegated Legislation Monitor, whether the regulations were made in compliance with their authorising Act and contained significant matters that ought be contained in primary legislation.

The government did not seek to have the third motion called on for debate, instead allowing the instrument to be deemed to be disallowed at the end of the sitting day. This last happened in June 2017: see Bulletins [313](#), [316](#). Because of the addition of a sitting day, an order passed in February requiring the motion to be dealt with on 29 March could not operate because the statutory deadline of 15 sittings days for determining the motion had passed.

After the sittings, the government made and published a [third, different iteration of the regulations](#), about which questions were asked at Senate estimates.

Legislation

Because of the early Budget and the electoral timetable, the government presented supply bills to the Senate rather than the Budget appropriation bills. This also occurred, for the same reasons, in conjunction with the early 2019 Budget and election. Supply bills were also presented and passed in 2020 (with the Budget delayed as part of the government's COVID response: Bulletin [342](#)) and 2016 (because of election timing and the dissolution of Senate: Bulletin [305](#)).

Among the bills passed was a bill to expand the operation of a terrorism reinsurance scheme to cover [cyclone damage and related flood damage](#). Crossbench amendments to expand the scheme further to encompass other types of flood damage were unsuccessful. The amendments sought to expand the coverage of the scheme, but did not increase the cap on the funds proposed to be appropriated, so it

was in accordance with Senate precedent to deal with them as amendments, rather than as requests to the House.

Several government bills were passed under a guillotine on the final sitting day, including an [Aged Care reform bill](#) responding to the recent Aged Care Royal Commission. Having earlier been amended in the House, the bill passed the Senate with a further 31 government amendments and four from the crossbench, notably including an amendment to require that at least one registered nurse is on duty at all times in each aged care residential facility. The government appeared to accept the amendment in the Senate, but the Senate's amendments were not considered by the House when it met the following day.

The Senate's final business for the Parliament was the [Mitochondrial Donation Law Reform \(Maeve's Law\) Bill 2021](#), which passed without amendment following further detailed consideration of amendments.

Orders and explanations

On 29 March Senator Faruqi asked for an explanation under standing order 164(3) for the government's failure to comply with an order for the production of documents relating to animal welfare incident reports. The government had responded on 18 February indicating it would comply, but required more time. However, the documents had still not been provided. Senator Faruqi pursued the matter further during estimates, from where it appears that the department had provided documents to the office of the relevant minister, but they had not been produced to the Senate.

The cumulative list of orders and responses for the 46th parliament is on the [Senate's business pages](#).

Privilege and the work of committees

On 21 March 2022, the Committee of Privileges presented its [182nd report](#) on an inquiry into possible obstruction of the naval shipbuilding inquiry of the Economics References Committee. The background is set out in Bulletins [349](#), [352](#) and [354](#). Briefly, the inquiry related to the Economics Committee seeking access to Australian Industry Capability plans relevant to the inquiry. It had initially requested the documents from the Department of Defence in early 2020. After the Senate made orders requiring that documents be provided and after protracted negotiations, the references committee was ultimately given access to the documents in February 2022.

The Committee of Privileges accepted that the conduct of the officials or the ministers in withholding the documents could amount to a substantial obstruction of the Economics Committee performing its functions. In other words, it was conduct which would meet the first criterion for a finding of contempt established by Privilege Resolution 3. However, as the documents had been provided, the committee concluded that no minister or departmental official should be found to have committed a contempt. The Senate adopted the committee's conclusion on 29 March. In tabling the report the chair of the committee, Senator O'Neill, noted that:

The Privileges Committee has rightly been sparing in its recommendations that a finding of contempt should be made and reticent to recommend further penalties where a contempt has been found. There should be no doubt that it will do so if it is necessary to resolve such matters without implicitly conceding an unfounded constraint on the powers of the Senate.

Two other matters involving possible matters of privilege were also progressed.

The first matter involved the protection of witnesses. The Select Committee on Job Security tabled its final [report](#), examining whether witnesses had been disadvantaged by their employer after giving

evidence to the committee. The Senate and its committees have always taken seriously allegations that witnesses may have been penalised due to their participation in the work of committees. Inquiries such as this one are rare, as committees are quick to caution against disadvantaging witnesses, and such cautions are generally heeded, particularly when the possibility of contempt is understood.

In this case, the committee was unable to determine conclusively that the workers had been disadvantaged as a result of giving evidence, and was satisfied that the matters raised had been remedied. The committee took the opportunity to highlight “that witnesses are protected by parliamentary privilege with respect to the evidence given and that witnesses should not be interfered with or otherwise mistreated following participation in a Senate inquiry.” It also cautioned that the matter could be revisited should further allegations be brought to the attention of individual senators.

The other matter involved apparently recalcitrant witnesses. This was raised by the Environment and Communications References Committee in its second interim [report](#) on its inquiry into oil and gas exploration and production in the Beetaloo Basin. The report detailed the committee’s interactions with a resources company whose wholly owned subsidiary company is in receipt of a \$7.5m Commonwealth grant to conduct exploration in the basin. The company was invited on several occasions to attend a committee hearing as a witness, including by video link, and was then summoned to appear. The witnesses rejected the invitations to appear, and failed to respond to the committee’s summons. The committee foreshadowed writing to the President to raise this as a matter of privilege, for investigation as a possible contempt of the Senate.

Inquiries

One reference was made to the Legal and Constitutional Affairs References Committee—the [Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia](#) for inquiry and report by 15 September 2022. Of course, the inquiry will technically lapse on the eve of the new Parliament, and it will be a matter for the Senate to determine whether to re-establish this and other inquiries that are not completed at that stage.

Reports

Seventeen reports were tabled during the sittings of the Senate. As well as the reports mentioned above, the eight legislation committees tabled reports on 2021-22 additional estimates, the Joint Committee on Corporations and Financial Services tabled its [report](#) on the 2020-2021 annual reports of bodies established under the ASIC Act, and the Joint Committee on the Australian Commission for Law Enforcement Integrity tabled its [report](#) of the Integrity Commissioner for 2020-21. Other tabled reports included the Joint Committee on Law Enforcement’s [report](#) on vaccine related fraud and security risks and the Joint Standing Committee on the NDIS’s final workforce [report](#).

The Economics References Committee’s [report](#) on unlawful underpayment of employees’ remuneration made 19 recommendations directed towards preventing and remedying underpayment of remuneration and employee entitlements.

The Foreign Affairs and Trade References Committee tabled its final [report](#) on Australia’s engagement in Afghanistan, making six recommendations directed towards improving the effectiveness of intake and settlement services for refugees, as well as improvements to donor and aid processes.

The Select Committee on Autism tabled its final [report](#), making 81 recommendations designed to improve services and support to people living with autism and their families.

The Select Committee on COVID-19 also tabled its final [report](#) on 7 April making 19 recommendations, including that a Centre for Disease Control be established. The committee also called for a review of mechanisms to compel compliance with requests for information, and greater accountability for unanswered questions on notice and public interest immunity claims that are not accepted by the committee and the Senate.

Estimates

Consistent with the previous five rounds of Senate estimates, the examination of proposed expenditure of government departments and authorities for the purposes of budget estimates 2022-23 proceeded in a COVID-safe manner, implementing public health measures designed to minimise the risk of transmission of COVID-19.

Estimates programs on 31 March were suspended to enable senators to attend the address by His Excellency Mr Volodymyr Zelenskyy, President of Ukraine.

There were limited references to public interest immunity claims during this round of estimates. Areas of examination of public funds and administration that received close attention included:

- Humanitarian visas for people from Afghanistan and Ukraine, and the displacement of 11 million people in Ukraine due to the present conflict
- Fixed wireless network upgrades to the National Broadband Network
- Activities of the National Recovery and Resilience Agency
- Questions about the Australian Public Service Commission's contract with KPMG for the APS Academy
- Regional security arrangements in the Pacific
- No allocation of funding in the budget for the First Nations Voice to Parliament

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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