



Procedural Information Bulletin

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For the sitting period 25 to 27 October 2022 and
Budget estimates hearings 28 October and 7 to 11 November 2022

Budget 2022–23 redux

This year has seen the Parliament's earliest Budget day – 29 March – and one of its latest, with the government's promised re-run of the Budget on 25 October 2022. The usual adjustments were made to hours of meeting, so that the Senate was suspended when the Treasurer's Budget speech and the Opposition Leader's Budget reply were made in the House of Representatives, resuming so that documents could be tabled and speeches incorporated in the Senate Hansard. Replies from other parties were also made during debate on the Supply bills, which passed the Senate on 26 October. Particulars of proposed expenditure were referred to legislation committees for examination during a truncated second Budget estimates round; the first having occurred in March and April this year.

The Senate also agreed to refer 'time-critical' bills to be introduced during the estimates week to legislation committee inquiries, to report in time for debate during the final sittings of the year.

Privileges Committee reference

On 25 October the President granted precedence to a matter of privilege raised by Senator Thorpe. This followed media reports that during the last parliament Senator Thorpe, then a member of the Joint Committee on Law Enforcement, had failed to disclose a personal relationship with a former member of an outlaw motorcycle gang while the committee examined matters related to such gangs.

The usual practice when allegations of misconduct arise in committee inquiries is to see that the allegations have first been investigated by the committee concerned. There are some advantages in doing so: that committee will have access to relevant records, and its members will generally be well placed to determine whether the alleged conduct involved or risked substantial interference with the committee's work. Some factors in this matter mitigated against that approach, particularly given that the committee was a committee of the previous parliament, with different membership and a different chair.

The President concluded that it would be appropriate to give the Senate the earliest opportunity to determine whether the matter warrants investigation by the Privileges Committee. While Senator Thorpe had raised the matter with the President, the Senate granted a minister leave to move to refer the matter, in terms that highlighted the importance of maintaining the integrity of parliamentary committees.

The matter was referred on the voices, after a brief debate.

Legislation

Several government bills passed the Senate during the week. The Senate did not insist on a package of Opposition amendments to a [bill to lift the income limit](#) for the Seniors Health Card, pending consideration of a government bill covering similar ground: see [Bulletin 365](#).

Four bills passed during extended hours on 26 October. A bill to provide an entitlement to [paid family and domestic violence](#) leave passed with Opposition amendments requiring a review of the Act and crossbench amendments restricting the use of information about an employee's entitlement to such leave. A bill to reduce the [Pharmaceutical Benefits Scheme \(PBS\) general co-payment](#) also passed, with a crossbench amendment to provide for the scrutiny and disallowance of special arrangements ministers may make under the *National Health Act 1953* in relation to the supply of pharmaceutical benefits. Bills to establish [Jobs and Skills Australia](#) passed without amendment.

Two bills passed during a short guillotine on 27 October: the Aged Care Amendment ([Implementing Care Reform](#)) Bill 2022, which passed without amendment; and the Counter-Terrorism Legislation Amendment ([AFP Powers and Other Matters](#)) Bill 2022, which passed without amendment or, indeed, debate. A bill to reform the processes for selection and appointment of members of the Australian Human Rights Commission also passed without amendment, after the Senate rejected an Australian Greens proposal to appoint an LGBTIQ+ Commissioner.

Disallowance

Adding to the tally of slightly unusual disallowance motions, the Senate on 26 October disallowed an already-repealed instrument; the Industry Research and Development ([Underwriting New Generation Investments Program](#)) Instrument 2021. The instrument, made under the previous government, had been repealed by the responsible minister on 24 October. Disallowance notionally prevents a substantially similar instrument being made again in the following 6 months.

Orders for documents

Responses to orders were tabled in the sitting, including some raising public interest immunity (PII) claims. Through longstanding practice and multiple resolutions since 1975, the Senate requires that claims to withhold information are justified on public interest grounds and asserts that it is for the Senate in each instance to determine whether a claim is validly made (see *Odgers' Australian Senate Practice*, 14th ed. chapter 19).

A response to an order seeking technical assessments of the Murray-Darling river system returned numerous documents though withheld others, claiming that processing them would 'significantly and unreasonably divert resources'. This basis for refusal is a common feature of FOI regimes in Australia; however, the Senate has not accepted this as a ground for raising PII claims and has rejected the mere invocation of FOI grounds as a substitute for the proper framing of PII claims: *Odgers*, 14th ed. p. 669. Nevertheless, as it appears the minister consulted with the senator who initiated the order, it may be that the Senate will regard the response as satisfactory.

A response to an order concerning changes to the effigy of the sovereign on Australian legal tender withheld information about potential coin designs citing commercial confidentiality. This PII ground is recognised by the Senate but requires the identification of a specific rather than general potential harm to commercial interests (see *Odgers*, 14th ed. p. 664)—the stated harm in this case being the potential for the information to 'result in speculation about future releases and impact the collector coin market in the short term'.

The sitting also saw the Senate make a number of new orders for documents. Ten orders—relating to the Global Methane Pledge, ASEAN military medicine and wine tourism—continued a recent practice of directing multiple orders to individual ministers concerning the same subject.

The cumulative list of orders and responses can be found on the Senate's [business pages](#).

Inquiries

Four bills were referred to legislation committees as a result of [report no. 6](#) of the Selection of Bills Committee.

The Senate also made three references to references committees:

- [School refusal](#) to the Education and Employment References Committee
- [Human rights implications of recent violence in Iran](#) to the Foreign Affairs, Defence, and Trade References Committee, and
- [Australian Securities and Investments Commission's investigation and enforcement capability](#) to the Economics References Committee.

In addition, the Parliamentary Joint Committee on Corporations and Financial Services self-referred an inquiry into [ASIC's capacity and capability to respond to reports of alleged misconduct](#), with terms of reference similar to those of the Economics Committee's references inquiry into ASIC. There have been other instances of similar or identical matters being referred to committees. The committees concerned often reach some informal agreement on the best way to proceed.

Reports

Five bill reports and one select committee interim report were presented out of session. The Select Committee on Work and Care tabled an [interim report](#) with eight recommendations, including a legislated paid parental leave period of 26 weeks, and the introduction of new questions in the Census designed to provide better analysis of the extent and nature of work and care responsibilities across Australia.

Estimates

Budget estimates hearings took place on 28 October and 7-11 November.

On 26 October the Senate resolved that the Economics Legislation Committee invite the Australian Financial Complaints Authority (AFCA) to appear at estimates. The authority has given evidence to the committee in relation to bill and reference inquiries, but had not appeared at estimates. While AFCA is not a Commonwealth entity, and is not currently in receipt of Commonwealth funding, these tests are not entirely determinative of which agencies or organisations should appear at estimates, which is generally a matter of judgement for committees. The direction to invite takes the decision out of the committee's hands. Despite not being a Commonwealth entity, or receiving funds from the Commonwealth government, AFCA's constitution does provide a role for the minister responsible for the *Corporations Act 2001*, arguably establishing a link to enable oversight by an estimates committee. The authority appeared before the committee on 9 November 2022.

Other areas of examination of expenditure of public funds included:

- Establishment of the Makarrata Commission
- Radioactive waste storage
- The possible re-opening of the Australian Embassy in Kyiv, Ukraine
- Conduct of the 2022 Commonwealth election
- Preparation for the 2032 Brisbane Olympic games, and
- Service standards and complaints related to aged care services.

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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