



Procedural Information Bulletin

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For the sitting period 31 July to 10 August 2023

Legislation

The Senate passed 12 bills during the fortnight, three with amendments.

The time for government bills was curtailed somewhat during the first week by debates on proposed committee references and disallowance motions. As a result, only one government bill – an omnibus Social Security bill arising from the Budget – was passed. The Opposition and the crossbench proposed a range of amendments to increase various payments, make some available to additional recipients, or increase the additional income some recipients could earn before their payments began tapering off. Where amendments would have the effect of increasing expenditure under a standing appropriation they were framed as requests for amendments, in accordance with Senate practice. However, none of the proposals were successful and the bill passed without amendments or requests.

In the second week the Senate passed an omnibus national security legislation bill, whose provisions chiefly sought to implement recommendations of the Comprehensive Review of the Legal Framework of the National Intelligence Community. A rare dissenting report of the Parliamentary Joint Committee on Intelligence and Security indicated that the Opposition did not support amendments to increase the membership of that committee; amendments that did not arise from that review. Unable to secure agreement to remove or vary the proposed amendments, Opposition senators voted against the bill at the third reading, despite professing to support the vast majority of its provisions. Amendments proposed by the Australian Greens to remove two parts of a schedule in the bill were also defeated, as was a crossbench amendment making it an offence under the *Intelligence Services Act 2001* to disclose the identity of members of the special forces.

A Telecommunications (Interception and Access) Amendment Bill, labelled urgent by the government, passed the Senate on 9 August, having being introduced into the House the previous afternoon. According to its [explanatory memorandum](#), the bill proposed to ‘clarify the ability of agencies to communicate foreign intelligence information about threats to Australia in accordance with the proper performance of their functions’. The Australian Greens proposed amendments to limit the communication of foreign intelligence information to purposes approved by the Attorney-General and sought to introduce a sunset clause, but the bill passed without amendments.

Other bills passed included a bill to provide permanent governance arrangements for [Jobs and Skills Australia](#); bills to establish an independent [Inspector-General of Aged Care](#); and a bill to strengthen the Wreck Bay Aboriginal Community Council's governance structures; enhance local control over decision-making; and help to enable homeownership style leases on [Aboriginal land in the Jervis Bay Territory](#).

On 3 August an Opposition bill to require the Productivity Commission to report on retail electricity prices and energy sources for electricity generation was defeated at the second reading stage.

Unanswered questions

Under standing order 74(5) senators may ask ministers why questions on notice and estimates questions have not been answered within required timeframes, then move to take note of the minister's explanation. The rationale of the procedures is to encourage ministers to answer questions, so if the minister responds by producing the required answers, the procedure ceases to operate.

On 9 August the Leader of the Opposition in the Senate, Senator Birmingham, asked the Minister Representing the Minister for Government Services to explain why 209 questions asked of Services Australia had not been answered. In response the Minister indicated 'that the minister's office instructed Services Australia to lodge answers to questions on notice from the most recent round of Senate estimates with the secretariat of the community affairs committee this afternoon'. It was not apparent from that response that the answers had actually been provided, so the Chair allowed Senator Birmingham to move to take note of the minister's explanation. When it became apparent that the answers had been lodged shortly before the matter was raised, the Chair determined that Senator Birmingham should be allowed to complete his contribution but that it would not be in order for the debate to continue.

Disallowance

A motion to disallow the so-called 60-day prescription regulations was brought before the Senate and defeated, after its proponents sought to postpone the matter to the next sitting period. The motion sought to disallow Schedule 2 to the National Health Legislation Amendment (Opioid Dependence and [Maximum Dispensed Quantities](#)) Instrument 2023, which is slated to commence on 1 September. It was defeated 28 votes to 33 after an obscure run of procedural events, which turn on the concept of control of notices of motion.

A notice of motion is a statement that a senator intends to move a motion on a specified sitting day. A notice remains in the control of the senator (or senators) who gave it, and they can withdraw it at any time: SO 77(3). Additionally, while the standing orders set out when different types of notices are called on, senators cannot be compelled to move them.

The notice to disallow was given on 9 August to be dealt with the following day. A senator in charge of a notice can seek to postpone it to a future day, but any senator may require that the proposed postponement is put to a vote. On 10 August the Senate voted against the postponement (27 Ayes/30 Noes), so that it remained on the Notice Paper for the day. The government successfully moved to suspend standing orders to require the notice to be called on, but its proponents declined to move it.

If a senator fails to move a motion when it is called on, it is usually taken to be withdrawn: standing order 83(2). However, notices for disallowance are treated differently. SO 78 provides a more deliberate process for the withdrawal of such notices; postponing them to the next sitting day so that other senators may adopt them. Senate practice is to apply the same principles when a notice to disallow is not moved: it is taken to be postponed. This allows another senator to object to the pending withdrawal and add their name to the notice: SO 78(3). The President made a statement to this effect.

Later in the day, the government again moved to suspend standing orders to require the (now postponed) notice to be called on. By this time, a government senator had added her name to the notice so that, when it was called on, it was moved at her request and defeated.

Points of order were taken about the capacity of senators to move a motion and then vote against it, but the President confirmed that was in order. There are rulings to that effect from 1957 noted in *Odgers Australian Senate Practice*, 14th ed., at p.291. As an example, in 1993 the Senate Government Leader, Gareth Evans, moved two contrary motions with the express intention of voting against one of them, to demonstrate the limitations of the Senate's practice in relation to equally-divided votes: see [Bulletin 79](#).

Orders and explanations

On 31 July, the Minister for Agriculture, Fisheries and Forestry attended the Senate to provide an explanation following the Senate's rejection, on 22 June, of the government's public interest immunity (PII) claim over documents relating to the resignation of the President of the Administrative Appeals Tribunal (see [Bulletin 372](#)). The minister's explanation was debated.

On 2 August, the Minister for Finance attended the Senate to provide an explanation concerning the government's response to orders relating to the enforcement activities of the Australian Securities and Investments Commission (ASIC). The requirement for the explanation arose from the Senate's adoption of recommendations of an Economics References Committee interim report (see [Bulletin 372](#)), and a subsequent report from the committee to the President of the Senate indicating that the Government had continued to withhold, and maintain its PII claim over, the information sought. Again, the minister's explanation was debated.

A new order seeking compliance with a previous order for documents relating to communications between the Australian Federal Police (AFP) and PwC was agreed to on 2 August, the Senate rejecting as overly general the government's PII claim that the documents could prejudice an ongoing AFP investigation. The government response, provided on 9 August, maintained the PII claim while providing additional information on its application to the documents within the scope of the order.

A proposed order seeking compliance with a previous order for Budget estimates briefing materials was negatived; and a further five proposed orders were negatived over the sitting fortnight, including in relation to gas transfer pricing; national security and climate risks; and Indigenous cultural heritage protection.

The Senate made seven new orders for documents, including in relation to a Makarrata Commission (7 August); the Bureau of Meteorology's Australis II supercomputer (8 August); and a Treasury 'assurance review' of the conduct of the ASIC chair (1 August). The review was subsequently provided (10 August), though with significant redactions and an accompanying PII claim. Two new orders, seeking specific documents concerning the conduct of an ASIC deputy chair, followed the Senate's rejection of an earlier PII claim over one of the documents as having failed to identify any specific harm that might arise from its disclosure.

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

Inquiries

The Senate referred eleven new inquiries in the sitting fortnight. Nine bill inquiries were established as a result of [report no. 8](#) and [report no. 9](#) of 2023 of the Selection of Bills Committee.

The [Competition and Consumer \(Gas Market Code\) Regulations 2023](#) were referred to the Economics Legislation Committee for inquiry and report by 6 October 2023. [Funding for the Australian Antarctic Division](#) was referred to the Environment and Communications References Committee for inquiry and report by 30 November 2023.

Reports

Fourteen reports were presented out of sitting in July, with a further seven reports tabled during the sitting fortnight. The Education and Employment References Committee [report](#) on the national trend of school refusal and related matters made 14 recommendations. These were directed towards improving national data collection and awareness of the issue; early intervention strategies; effective resources to support students, families, educators and schools; and development of a national action plan on school refusal.

The Select Committee on foreign interference through social media tabled its final [report](#), making 17 recommendations designed to deliver a more effective response to cyber-enabled and online activities that are intended to spread disinformation and disrupt Australia's democratic institutions. These recommendations include:

- all large social media platforms meet minimum transparency standards, with the power for the relevant minister to ban the platform from operating in Australia for non-compliance with these standards
- greater support for independent, professional foreign-language journalism to expand the sources of uncensored news for diaspora communities to learn about issues such as human rights abuses inside their country of origin
- that the Australian Government investigate options to identify, prevent and disrupt AI-generated disinformation and foreign interference campaigns.

Further budget estimates hearings

The Legal and Constitutional Affairs Legislation Committee held an additional budget estimates hearing to examine the Attorney-General's portfolio.

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**