



Procedural Information Bulletin

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For the sitting period 27 November to 7 December 2023

Senators

On 28 November, Senator Pat Dodson announced that he would resign his place as a senator for Western Australia in the new year. On 30 November, the New South Wales Parliament chose Devanand (Dave) Sharma to fill the casual vacancy caused by the resignation of Senator the Hon. Marise Payne earlier this year. Senator Sharma was sworn in on 4 December.

Legislation

There were some unusual proceedings in relation to legislation during the fortnight.

In the previous sittings, the Senate passed four private senators' bills replicating parts of the government's omnibus Fair Work Legislation Amendment ([Closing Loopholes](#)) Bill 2023 and, a week later, sent a message requesting that the House of Representatives 'immediately consider' the bills: see [Bulletin 376](#). On 28 November, the Senate sent a message to the House requesting a conference on the bills. Conferences provide a means for the Houses of traditional, Westminster-style parliaments to resolve disagreements on bills and to discuss other matters. At the Commonwealth level they have been extremely rare, with only two formal conferences agreed to; the last in 1931. Until now, the only time the Senate had requested a conference was on 22 June 1950, however, the House did not agree to the request: see *Odgers' Australian Senate Practice*, 14th ed, pp.714-5.

The standing orders prescribe that conferences on Senate bills should occur while the bills are in the possession of the Senate, after the House has indicated its disagreement by message. As neither of these conditions were satisfied on this occasion, the Senate suspended the operation of those standing orders in requesting the conference.

The House did not respond to the request. Surprisingly, however, the government on the final sitting day brought forward a compromise proposal for the passage of parts of the Loopholes bill, including those parts included in the private senators' bills. That compromise involved the Senate dividing the omnibus bill into two bills and the House – for the first time – accepting that the Senate could divide a House bill.

The division of the bill was not undertaken in the usual way, that is, by instructing a committee of the whole to divide a bill and add titles and words of enactment: see *Odgers*, 14th ed., pp. 325–8. Instead, the government suspended standing orders to allow a vote on a motion to incorporate various provisions into a separate bill to be dealt with next year, and to require a vote on the original bill, as amended, at midday. The bill passed in its revised form, with further government amendments.

The message to the House noted that the Senate had passed the bill with amendments, “including amendments to divide the bill by incorporating certain Parts, Divisions and Schedules in a separate bill”, and requested that the House concur in the Senate’s action dividing the bill and in its amendments. In resolving to do so, the House reasserted its view “that the division of a bill in the House in which it did not originate is undesirable, but sought to distinguish this occasion “on the basis that it involves the division of a Government bill in the Senate, at the initiation of the Government, setting it apart from previous occurrences”.

Whether the Senate will accept such restrictions as a precedent remains to be seen.

Consideration of the Loopholes bill had initially been deferred until next year, when the Education and Employment Legislation Committee is due to report on its provisions. The motion that brought the bill on for debate also provided that the proceedings of that committee now be confined to the provisions of the Loopholes No. 2 bill that remains before the Senate.

Several other bills were also considered under guillotine, including arrangements that allocated a specified amount of time to different stages of bills, rather than nominating a deadline for their consideration. In one case, a bill subjected to a guillotine received a reprieve, by way of a second reading amendment deferring further consideration until a committee reports on a sheet of amendments circulated by the government.

Among the bills considered under a guillotine was [another bill](#) dealing with the recent High Court decision overturning indefinite immigration detention: see Bulletin 376. It began as an 8-page bill introducing additional criminal penalties for the breach of certain visa conditions. While the bill was before the Senate, the High Court published its [reasons for the decision](#). The government subsequently introduced extensive amendments to implement a “Community Safety Order” scheme, modelled on the preventative detention scheme for people convicted of various terrorism offences. This would allow the minister to apply to a State or Territory Supreme Court for a community safety detention order or community safety supervision order in relation to the people among the cohort affected by the decision. That bill, and another allowing the minister to seek a court order to [cease a dual citizen’s Australian citizenship](#), where the person has been convicted of a serious offence or offences, were the subject of fiery debate. Each passed with government amendments and opposition support. Following its passage, the citizenship bill and circulated amendments were referred to the Parliamentary Joint Committee on Intelligence and Security for inquiry and report.

Significant changes were also made to the Nature Repair Market bills under a deal between the government and the Australian Greens to secure their passage. On 4 December the Senate resolved that the date for a committee to report on the bills be brought forward by 4 months, allowing debate on the bills to proceed the next day. The government had also given a contingent notice to instruct the committee of the whole to consider amendments to the bills that were not relevant to their subject matter. The bill passed with Greens amendments prohibiting the use of biodiversity certificates created under the scheme as environmental offsets and government amendments expanding the “water trigger” under the *Environment Protection and Biodiversity Conservation Act 1999* to cover unconventional gas development.

On 6 December a bill to establish a framework for the implementation of the [United Nations Declaration on the Rights of Indigenous Peoples](#) (UNDRIP), introduced by Senator Thorpe, was negatived at second reading. During the debate, and in answering subsequent questions, ministers indicated the government was developing a response to the [report of the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs](#) on the application of UNDRIP; tabled on 28 November.

Disallowance

On 27 November there was an unusual division on a motion to disallow the Competition and Consumer (Gas Market Code) Regulations 2023. The Australian Greens initiated the motion, which the government opposed. A speaker in the debate indicated that the Opposition would not be supporting the disallowance and when the division was called, the Opposition – save Senator Canavan – abstained. The motion was defeated, 16 votes to 21.

Orders and explanations

The Minister for Trade and Tourism continues to attend the Senate on the first day of each sitting block to explain the government's failure to provide the National Disability Insurance Scheme (NDIS) financial sustainability framework: see [Bulletins 374 to 376](#). On 6 December the Minister for Foreign Affairs was asked, under standing order 164(3), to explain the failure to comply with an order for the production of documents (OPD) concerning an incident in Jervis Bay involving a Defence MRH-90 helicopter.

The Senate made 23 new OPDs, including in relation to infrastructure reviews (27, 28 and 29 November), Hunter class frigate procurement (27 November), the Swift Parrot Recovery plan (28 November), stage 3 tax cuts (29 November), and the Snowy 2.0 project.

The government tabled 27 responses to previous orders. A number of fully or substantially compliant responses returned documents relating to taxation of multinational companies (27/11); human induced regeneration (29/11); the development of a social security entitlement calculation engine (6/12); certain Veterans Affairs entitlement claims (7/12); and funding for family, domestic and sexual violence services (7/12). A response to an order concerning the impact of the stage 3 tax cuts on inflation advised that no documents fell within the scope of the order (7/12).

The government raised public interest immunity (PII) claims to withhold all documents in respect of orders relating to the consequences of the recent High Court decision on indefinite immigration detention (27 November), citing legal professional privilege and potential harm to international security (see [Bulletin 376](#)); the final report of the Infrastructure Investment Program Strategic Review, citing Cabinet confidentiality and potential harm to Commonwealth-State relations (30 November; and 7 December); and the reasons for the listing of certain terrorist organisations, citing potential damage to national security (30 November). PII claims to partially withhold documents were also raised in relation to orders concerning the Barossa gas project (27 November), citing potential harm to international relations; the Hunter Class frigate procurement, citing Cabinet confidentiality and national security (30 November); and the Murray-Darling Basin Plan and Northern Basin Aboriginal nations funding agreement, citing 'commercially sensitive' information (4 December). Somewhat dubious PII claims were raised on grounds not previously recognised by the Senate: the final report of the ALRC's financial services legislation inquiry was withheld on the basis that it would eventually be tabled in accordance with statutory timeframes; and certain documents relating to the Competition Taskforce advisory panel were withheld due to 'sensitive policy issues' (7 December). A PII claim over certain documents relating to Indigenous cultural heritage protection laws failed to cite any ground whatsoever, notwithstanding the well accepted form of and approach to raising such claims (see *Odggers*, Chapter 19).

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

Inquiries

Twelve bill inquiries were established as a result of [report no. 15](#) and [report no. 16](#) of the Selection of Bills Committee.

Government amendments to Treasury Laws Amendment (Making Multinationals Pay Their Fair Share- Integrity and Transparency) Bill 2023 were referred to the Senate Economics Legislation Committee for inquiry and report by 5 February 2024.

The Senate made four referrals to references committees:

- [Improving consumer experiences, choice and outcomes in Australia's retirement system](#) was referred to the Economics References Committee
- [Sovereign capability in the Australian tech sector](#) and [lobbyists and transparency arrangements relating to the lobbyist register](#) were referred to the Finance and Public Administration References Committee, and
- [Right wing extremist movements in Australia](#) was referred to the Legal and Constitutional Affairs References Committee.

The [Select Committee on Supermarket Prices](#) was also established.

Reports

Ten reports were tabled along with five that were presented out of session. Among them was the Legal and Constitutional Affairs References Committee [report](#) on the operation of Commonwealth Freedom of Information laws. The committee made 15 recommendations designed to improve the timeliness and efficacy of the FOI system, and access to information for citizens.

The Select Committee on Provision of and Access to Dental Services in Australia tabled its final [report](#) and made 34 recommendations focused on improving data collection, access to preventative care and treatment, increasing the oral health workforce, and achieving universal essential oral health care.

The Economics References Committee tabled its [report](#) on the influence of international digital platforms. The committee made eight recommendations focused on preventing anti-competitive behaviour and improving consumer protection, including protection for children's data.

The Education and Employment References Committee tabled an [interim report](#) out of sitting on the issue of increasing disruption in Australian school classrooms.

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**