



Procedural Information Bulletin

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For the sitting period 18 to 28 June 2018

Senators

Senator David Smith was sworn in on 18 June, to replace Senator Gallagher (see [Bulletin 325](#)). Senator Smith and Senator Stoker made their first speeches during the fortnight.

Several senators made statements about their party status, including Senator Martin (elected under the banner of the Jacqui Lambie Network, but sitting as an independent) joining the Nationals, (former One Nation then independent) Senator Anning joining (Bob) Katter's Australia Party, and One Nation Senator Burston announcing his status as an independent one day, and as a member of the (as-yet-unregistered) United Australia Party the next.

Senators Rhiannon and Bartlett have each announced their intention to resign from the Senate in the next sitting fortnight, leaving casual vacancies to be filled by the NSW and Queensland parliaments.

Legislation

Early in the first sitting week the Senate passed bills establishing a [National Redress Scheme for Institutional Child Sexual Abuse](#), following the recommendations of the recent Royal Commission, as well as a bill criminalising [impersonation of a Commonwealth body](#). The focus then shifted to the bill to implement [the three-stage personal income tax cuts](#) announced in the Budget, which was eventually passed without amendment. The Senate initially amended the bill in an equally divided vote on the question whether the proposed tables of tax rates to commence in 2024-25 should 'stand as printed' (ie, remain) in the bill. The vote indicated that the proposed tables lacked majority support, and that the bill should proceed without them. After the House rejected those amendments the government moved that the Senate should not insist on them. The Senate agreed, with two votes shifting to support retaining the tables in the bill.

The government listed its bill proposing to extend company tax cuts to bigger businesses for the second week. An opposition motion on 25 June to prioritise the bill ahead of other government business was unsuccessful and it was ultimately held over till the Spring sittings. Proceedings on the [Water Amendment Bill 2018](#) contained an unusual element. The bill would allow the relevant minister to direct the Murray-Darling Basin Authority to prepare an amendment to the Basin Plan 2012 that is the same in effect as an amendment that has previously been disallowed, without having to again undertake the consultation required under the *Water Act 2007*. The Senate had disallowed such an amendment in February (see [Bulletin 322](#)) and an apparent compromise had been reached between the government and opposition to see it reinstated. The bill did not seek to override the requirement in section 48 of the *Legislation Act 2003* that an instrument cannot be made again within 6 months of disallowance. Instead, the passage of the bill was accompanied by a resolution authorising the remaking of the instrument, moved as a second reading amendment. The resolution was in a slightly different form than

its predecessors, reflecting amendments to the Legislation Act enacted in 2015.

Toward the end of the sittings the Senate considered a pair of national security bills, the [Espionage and Foreign Interference bill](#) and a bill to establish a [Foreign Influence Transparency Scheme](#). The Parliamentary Joint Committee on Intelligence and Security [reported on the bills](#), recommending their passage, albeit with substantial amendments. As a result, some 280 amendments were adopted by the House on 26 June, the amended bills were printed the next morning and sent to the Senate. Passage through the Senate was assured by the bipartisan support that emerged through the committee process. Noting that the committee comprises only government and opposition members, a number of crossbench senators sought unsuccessfully to refer the bills to a Senate committee for further examination. The bills passed the Senate without further amendment after being given precedence in debate.

Some 26 government bills passed the Senate during the fortnight, about half of them during the period for ‘non-controversial’ legislation on the final sitting day. Two non-government bills also passed the Senate, the Australian Greens’ [Axe the Tampon Tax](#) bill on 18 June and an Opposition bill to reduce the threshold for the ATO to report [private corporate entities’ tax information](#), passed with amendments on 25 June. Seven private senators’ bills have now passed the Senate during this parliament. To date only one – last year’s [marriage laws amendment bill](#) – has been considered by the House of Representatives. An Australian Greens’ bill to [lower the voting age and increase voter participation](#) was debated at the end of the first sitting week, before being referred to the Joint Standing Committee on Electoral Matters.

Routine of business

Several procedural motions during the fortnight sought to variously expand or contract the time available to consider bills and otherwise rearrange the Senate’s program.

For instance, a long list of speakers on the income tax bill was accommodated by an agreeable arrangement for additional hours on 19 June, while a motion to truncate proceedings on that bill on subsequent days caused considerable acrimony. The government successfully moved to limit the time for the remaining debate, so that numerous amendments were voted upon under a ‘guillotine’, and also provided that questions on any message from the House of Representatives were to be put ‘immediately without amendment or debate’. While no direct precedent has been identified, there are several examples involving the allocation of 15 mins for such messages, or of debate being truncated by the ‘gag’ procedures in standing order 199. In any event, a number of statements on the message were made by leave, attended by points of order about the procedure.

It should be noted that these restrictions were put in place on a majority vote of the Senate on 20 June, and that the Senate rejected a motion from the Opposition early on 21 June to remove them. Neither the President nor the Chair of Committees could subsequently entertain further proposals to divert from that agreed procedure, in keeping with a line of Presidents’ rulings beginning in 1991 about the potential for repeated suspensions of standing orders to obstruct Senate business. Those rulings also prevented repeated attempts by the Australian Greens to suspend standing orders on 21 June. These matters are dealt with in Odgers, 14th ed., under [Suspensions of standing orders](#).

As noted above, an Opposition motion to bring forward (but not to limit) debate on the company tax bill on 25 June was unsuccessful. On 27 June, crossbench senators resisted a government motion to allow debate on the espionage and foreign interference bills, however the government moved successfully

to suspend the standing order which otherwise would have deferred them. A motion in the usual form to establish the list of ‘non-controversial bills’ to be considered at lunchtime on 28 June was expanded by an amendment moved by leave into a motion varying the Senate’s hours and routine of business so that it would not adjourn until proceedings on several bills were concluded. Leave – that is, unanimous consent of all senators present – was required to move that amendment, as it went beyond the scope of the motion the minister was able to move under the standing orders.

On 26 June, parties from around the chamber combined to pass a motion to give a private senator’s bill precedence in debate in the next sitting week. The [Restoring Territory Rights \(Assisted Suicide Legislation\) Bill](#) is the latest iteration in a series of bills introduced since 2008, to restore to the Northern Territory and the Australian Capital Territory the power to enact laws of the kind proscribed by the [Euthanasia Laws Act 1997](#). (Senators have also on several occasions introduced private senators’ bills to address directly the rights of the terminally ill in those territories, or to repeal the 1997 Act, purporting thereby to restore the Northern Territory’s *Rights of the Terminally Ill Act 1995*.)

Twice during the fortnight the Senate rejected proposals to suspend the standing orders to allow a debate (on 25 June) or require a vote *without* debate (on 27 June) on motions ‘determined as not formal’. Formal business is a device under [standing order 66](#) intended to enable the Senate to vote on proposed resolutions on a no amendment/no debate basis. It is a procedure apt for determining myriad formal and procedural matters (including decisions to refer matters to committees or to fast-track the introduction of legislation) but is not well suited to determining complex or controversial motions. Any senator may object to a motion being considered on this basis, although this opens up the possibility of a procedural debate. Restrictions on amending or debating motions at this time are subverted by seeking leave to move amendments or make ‘short statements’. Once rare, such statements have become ubiquitous. The refusal of leave can, again, spark procedural debate. The Senate Procedure Committee has on several occasions lamented the abuse of this procedure, to little avail, and the past sitting fortnight has again highlighted its shortcomings.

On a happier note, the Senate on 26 June adopted a recommendation of the Procedure Committee to amend standing orders relating to the hours and routine of business, in the terms of a temporary order made on 7 December 2017 and adopted for a trial period (see [Bulletin 321](#)).

Privilege

On 21 June the Senate adopted the recommendations of the 168th Report of the Senate Privileges Committee on [Parliamentary privilege and the use of intrusive powers](#). This followed up on the committee’s concerns about short-comings in the processes for the execution of search warrants where privilege might be involved (see the [164th Report, Search warrants and the Senate](#)). The report also dealt with matters referred to the committee concerning, in particular, the use of covert intrusive powers, such as examination of preserved metadata, which may be accessed without a warrant. The committee noted the chilling effect the use of such powers can have on the provision of information to the parliament, notwithstanding there may be no awareness that those powers have been exercised on any particular occasion. The committee considers that, where information which might attract privilege is seized or accessed – regardless of the nature of the powers being exercised – law enforcement and intelligence agencies ought follow processes which enable claims of privilege to be raised and resolved prior to the information being interrogated. The committee recommended that protocols be developed between the parliament and executive setting out agreed processes for those agencies to follow when exercising those powers.

Privilege also featured in the PJCIS inquiry into the Foreign Interference Transparency Scheme bill, referred to above, with the committee addressing concerns that parts of the bill encroached upon the traditional scope of privilege. This was particularly the case where it was intended that coercive powers given to an executive officer should operate in the parliamentary sphere.

While there is a presumption that the ‘powers, privileges and immunities’ of the Houses are not affected by legislation except by express words, it can be unsatisfactory to rely on such a presumption when statutory language deals with matters otherwise thought to be reserved for the Houses themselves; in this case, activities intended to influence ‘proceedings of a House of the Parliament’. The committee recommended that – to avoid doubt – the bill be amended to specify that the scheme was not intended to affect privilege. Moreover, the committee pressed for an amendment to put privileged material beyond the reach of the secretary’s coercive powers (see *now* section 9A, *Foreign Influence Transparency Act 2018*).

The committee went further, in the end, recommending that senators and members be excluded entirely from the registration requirements in the bill, and asking the two Houses to develop a parallel transparency scheme appropriately tailored for the parliamentary environment (see [PJCIS report](#), Chapter 5 and paragraphs 10.140–158).

Joint Committee on Public Accounts and Audit

On 8 May, the Chair of the Joint Committee of Public Accounts and Audit made the usual oral report to the Senate about the committee’s oversight of the budget for the Parliamentary Budget Office and the Australian National Audit Office (ANAO). The committee has statutory responsibility to oversee the budget for those offices under the *Parliamentary Service Act 1999* (for the PBO), the *Auditor-General Act 1997* (for the ANAO) and the Act under which the committee is established, the *Public Accounts and Audit Committee Act 1951*. The chair told the Senate that the ANAO had not sought supplementation in the budget, that the Auditor-General advised that the ANAO’s estimated expense could be met within existing resources, and that the committee endorsed the proposed budget.

On the first sitting day after budget week, the chair made a statement explaining that certain reductions had been applied to the appropriations for the ANAO over the forward estimates. The chair explained that ‘[d]ue to budget confidentiality provisions, the Auditor-General was unable to provide the committee with this information prior to the release of the budget.’ Similar statements had been made in the House by the Deputy Chair of the Committee, and by the Auditor-General appearing before Finance and Public Administration Estimates. The chair went on to note that the Auditor-General proposed to use accumulated reserves to meet the ANAO’s performance targets.

It is passing strange that the committee charged with overseeing an agency’s budget would not have before it the information necessary to discharge that statutory duty, and be left in the position of providing incomplete information to the parliament and endorsing a budgeted figure at variance with the amount included in the appropriation bills. The suggestion that budget confidentiality requirements should prevent the provision of accurate information is curious, and misunderstands the accountability of the executive government to the parliament. As the chair noted in closing, the committee is considering how to ensure it continues to have access to the necessary information.

Committee activity

Two committees used [procedural order 9B](#) to hold additional hearings for the Budget estimates round during the sitting fortnight. The Finance and Public Administration Legislation Committee heard from the Australian Public Service Commissioner, the Merit Protection Commissioner and the Department of the Prime Minister and Cabinet in relation to the progress of a complaint against the Public Service Commissioner. The Community Affairs Legislation Committee took further evidence from the Department of Health.

Twenty new legislation and references committee inquiries were adopted over the fortnight, including one into the safety of pet food following recent media coverage about a debilitating condition in dogs possibly linked to pet food, and a similar number of reports were tabled.

Two new select committees, one on charity fundraising in the 21st century and the other on electric vehicles, were established bringing the number of select committees for this parliament to 14, the highest number for any parliament since the current committee system was established in 1970.

A number of reports tabled during the fortnight received media attention. The Environment and Communications References Committee tabled a report on the waste and recycling industry in Australia, the Community Affairs References Committee tabled a report on the science of mitochondrial donation and the Economics References Committee presented its report into the long running inquiry on Australia's naval shipbuilding industry. Less high profile reports on the most recent round of estimates hearings were also tabled as evidence of the Senate's role in holding the executive to account.

Orders for the production of documents

A range of fresh orders were made, covering subjects such as the National Broadband Network (reiterating an order made on 9 May 2018), thalidomide survivors, the Great Barrier Reef Foundation and the Future Submarines Project. Details of the orders and responses can be found [online](#). A motion to require the Aged Care Minister to attend the Senate to make a statement about answers to questions on home care aged packages was unsuccessful.

Summaries

Over the past year or so the Senate Daily Summary – a mainly online resource summarising the previous day's proceedings – has acquired a new aspect: a weekly compilation, identifying the main items of business dealt with by the Senate during each sitting week, with links to footage of debate, transcripts and procedural text. Information is collated under topics such as senators, bills, committees and documents, and a new tab has recently been added for statistics. The weekly summaries are (naturally) on the [daily summary homepage](#).

The [ParlWork version of the Dynamic Red](#) – the Senate's online order of business – contains the most useful links to each day's business, and the information it contains is being progressively enhanced. It remains the most useful way to access the homepages for bills scheduled for debate on any given day. A recent innovation elsewhere on the website is a list of all bills before the Senate to which amendments have been circulated. It – along with numerous other useful business lists – can be found on the [Senate business page](#).

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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