

No. 148

for the sitting period 30 October—10 November 2000

13 November 2000

DELEGATED LEGISLATION DISALLOWED

Motions to disallow delegated legislation on grounds other than the scrutiny criteria applied by the Regulations and Ordinances Committee are undergoing something of a revival.

Two motions were moved together by leave to disallow different parts of the same set of migration regulations on 1 November. One of the notices had been given that day, and leave was necessary to move it on the same day as well as combine it with the other notice. The motions were moved because the regulations commenced on that day and the majority of the Senate wished to disallow them before they could have any effect. Disallowed regulations cease to have effect at the time of disallowance, and any application of them between their commencement and disallowance remains lawful in spite of the disallowance, but this seldom leads to difficulties in practice.

Parts of a set of civil aviation regulations were disallowed on 8 November, following complaints from the aviation industry about anomalies in the regulations. The notice originally covered the whole set, but was amended to restrict it to specific parts (for the principles governing such amendments, see *Odgers' Australian Senate Practice*, 9th ed, electronic update, p. 346).

The Senate again used its power to disallow determinations approving alternative schemes promulgated by states in relation to the right to negotiate under the native title legislation. A scheme put forward by Western Australia was disallowed on 9 November.

REQUEST TO AUDITOR-GENERAL

On 2 November a motion was passed requesting the Auditor-General to undertake an audit of the entitlements of members of Parliament, following the controversy about the Minister for Employment, Workplace Relations and Small Business' Telecard.

In the past the Senate has made orders for production of documents requiring Auditor-Generals' reports on particular matters, but since the passage in 1997 of the new Auditor-General Act, which makes it clear that the Auditor-General is not subject to parliamentary nor executive government direction, these motions have been put in the form of requests to the Auditor-General.

At the end of the sitting period the Auditor-General indicated that he would conduct the audit in accordance with the Senate's request.

ORDERS FOR PRODUCTION OF DOCUMENTS

The Senate has on foot several continuing orders for production of documents, requiring the presentation of periodical reports on particular matters. One such order requires the Australian Competition and Consumer Commission to report regularly on anti-competitive practices by health funds and providers in relation to private health insurance. Such a report was provided on 8 November.

The pursuit of matters relating to the safety of heavy trucks continued with a further order for documents on 1 November, in response to which a document was produced in accordance with the order on the following day. The order for documents was in an unusual form, providing that, if there was a failure to comply with the order, the minister would have to make a statement of explanation and a motion could then be moved to take note of the statement. This was an attempt to use the mechanism employed in standing order 74 in relation to answers to questions on notice, expenditure of scarce legislative time in debate as an incentive for ministers to comply.

On 9 November an order was passed for documents relating to a development in a place with the uninspiring name of Dismal Swamp, the documents being due on the first sitting day in the next period of sittings.

BILL DIVIDED

The Health Legislation Amendment Bill (No. 4) 1999 was the subject of an instruction to the committee of the whole on 30 October, pursuant to which, on the following day, the bill was divided into two bills. When the bills were reported out of committee, an amendment was moved to the motion for the adoption of the report of the committee to defer until June 2001 consideration of the bill created by the division of the original bill. Other amendments were made to the original bill. The majority of the Senate took the view that the provisions taken out of the original bill were premature and should be deferred until the operation of provisions in the principal act are reviewed.

This is only the second occasion on which the Senate has divided a bill, the first occasion being in 1995, although the Senate's standing orders have always provided for the division of bills, and the procedure is quite common in some state parliaments.

The Senate's amendments of the bill had not been considered by the government in the House of Representatives at the end of the sitting period.

BILLS AMENDED: SAME AMENDMENT

In the course of extensive amendment of the Family Law Amendment Bill 2000 on 8 November, an amendment which had previously been negatived was put again and carried. A point of order was raised about whether this was in accordance with the standing orders. Standing order 118(2) provides that an amendment may not be moved if it is the same in substance as an amendment already determined, unless a recommittal of the bill has intervened. The Chair ruled that it was in order because in each case the amendment had been put by leave as part of a package of amendments, with a different relationship with other amendments in the package, so that the amendment was not the same in substance in each case.

Other bills substantially amended included the Tobacco Advertising Prohibition Amendment Bill, the Telecommunications (Consumer Protection and Service Standards) Amendment Bill (No. 2), the Financial Sector Legislation Amendment Bill (No. 1), the Indigenous Education (Targeted Assistance) Bill, the Child Support Legislation Amendment Bill (No. 2) and the Fuel Quality Standards Bill.

In the case of the Tobacco Advertising Prohibition Amendment Bill, one amendment was not insisted on when disagreed to by the government in the House, and substitute amendments were accepted in relation to some amendments to the Telecommunications (Consumer Protection and Service Standards) Amendment Bill (No. 2).

Controversy over the government's scheme for grants to private schools was reflected in extensive amendments and requests for amendments to the States Grants (Primary and Secondary Education Assistance) Bill on the last day of the period. Some amendments were in the form of requests because they increased grants in respect of children with disabilities. Other amendments were intended to reduce grants in respect of private schools, but the effect of the amendments was not sufficiently clear to conclude that the effect of all of the Senate's amendments was simply to reallocate the appropriation and not increase its total. If that were the case, none of the amendments would have had to be put in the form of requests.

SENATE DAILY SUMMARY

This bulletin provides Senate staff and others with a summary of procedurally significant occurrences in the Senate. The *Senate Daily Summary* provides more detailed information on Senate proceedings, including progress of legislation, committee reports and other documents tabled and major actions by the Senate. Like this bulletin, *Senate Daily Summary* may be reached through the Senate home page at www.aph.gov.au/senate

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