

# DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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## **DELEGATED LEGISLATION**

Before a senator withdraws a notice of motion for disallowance of a piece of delegated legislation, other senators must be given the opportunity to take over the notice (standing order 78). This safeguard ensures that senators who may wish to support a disallowance motion do not have their rights negated by the withdrawal of a notice after the time for giving notice has expired. On the other hand, if a senator who has given a notice does not move the motion when it is called on, the motion is withdrawn (standing order 83(2)). If the latter situation arises in relation to a disallowance notice, the chair rules that the notice is not withdrawn until other senators have had a chance to take it over. An occasion for this process to operate occurred on 17 October, when a disallowance motion standing in the name of Senator Harris, but not supported by any other senator, was called on while he was absent. If another senator had wished to support the motion, that senator could have taken it over or moved it on Senator Harris' behalf.

Disability standards made under the Disability Discrimination Act are subject to unusual provisions for parliamentary control. If no notice is given in the Senate to amend standards within 15 sitting days after they are tabled, they come into effect at the end of that period. If a notice is given to amend the standards, they do not come into effect until both Houses approve the standards with or without the amendment. These provisions were inserted into the Act by an amendment made by the Senate in 1992, one of several amendments whereby the Senate has imposed special provisions for parliamentary control on particular instruments of delegated legislation. On 23 October Senator Allison withdrew by leave a notice she had given to amend some disability standards. It was then necessary to move a motion to approve the standards without the amendment and to send a message to the House of Representatives for the approval of the standards there. Senator Allison required leave to withdraw the notice because standing order 78 is interpreted as applying to all disallowance-type provisions, even where the provisions concerned do not strictly fall within the language of the standing order, on the basis that the safeguard of senators' rights should apply to all such provisions.

Some regulations relating to the Great Barrier Reef Marine Park were disallowed on 23 October. An attempt by the government to adjourn debate on the motion of disallowance was not successful.

#### **ORDERS FOR DOCUMENTS**

An order made on 16 October required the production of documents relating to the controversial matter of the ethanol excise, particularly relating to a certain company, Manildra, which is alleged to be the main beneficiary of an associated subsidy. A statement was made by the government on 21 October to the effect that the government intended to comply with the order, but that the deadline could not be met because of the difficulty of gathering up all relevant documents. The mover of the motion, Senator O'Brien, complained that some of the documents should have been produced, but indicated that he would await the final production of the documents.

An order passed on 17 October requires documents relating to a trial of genetically modified Canola, reflecting the anxiety about genetically modified crops.

An order passed last year required the Australian Competition and Consumer Commission to present a report about prices in the retail grocery trade. This order resulted from controversy about monopoly power in that sector. This was one of several orders for the production of documents whereby the Senate requires reports on particular matters. A report by the Commission under this order was presented on 15 October.

#### **LEGISLATION: BILLS IN DISPUTE**

An unlikely subject of dispute between the Senate and the government was the Members of Parliament (Life Gold Pass) Bill 2002, which was introduced by the government to modify and restrict post-retirement travel entitlements following recent controversy about particular cases. The Senate passed an amendment on 16 October to make the definition of "spouse" under the bill consistent with the definition used in the Parliamentary Entitlements Act and other legislation. The government, however, rejected the amendment, and on 21 October the Senate insisted on it, thereby putting the bill in dispute. (The amendment was moved in the form of a request under section 53 of the Constitution, because it would expand the category of recipients of benefits paid out of a standing appropriation in the bill.)

Much more serious questions were raised by the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002, part of the government's anti-terrorism package, which proposes to allow security officers to detain suspects. The bill was referred on 21 October to the Legal and Constitutional References Committee for inquiry and

report by 3 December. An attempt by the government to have the bill declared an urgent bill so that it could be subjected to a guillotine was rejected.

Another bill to amend the anti-terrorism legislation had to be rushed through on 23 October. Provisions enacted earlier, as part of the government's compromise to get the legislation through the Senate, required that the proscription of a terrorist organisation by the government would not come into effect until the period for disallowance action in the Senate (15 sitting days) had passed. Due to delay in proscribing organisations, the proscriptions would not come into effect until next year. The bill remedied this situation by allowing them to take effect immediately.

## **TAXATION BILLS**

Section 53 of the Constitution provides that bills for appropriating money or imposing taxation cannot be initiated in the Senate. Senator Brown, however, introduced on 21 October a package of bills to impose a tax on plastic bags and to spend the money thus raised on measures to minimise the use of plastic bags. He did this by presenting bills which provide all the machinery for the tax and the expenditure of the money raised, while leaving the actual appropriation of the money and the imposition of the tax to future enactment should the bills pass. He also tabled a copy of a bill to impose the tax to show how it could be done.

This method of initiating taxation bills in the Senate was more frequently used in the past, occasionally by governments for government bills.

These bills are not likely to pass because, apart from the requirements of getting them through the Senate, the government usually does not allow the consideration of Senate bills in the House of Representatives.

## **SELECT COMMITTEE REPORT: COMPELLABILITY OF WITNESSES**

The report of the Select Committee on a Certain Maritime Incident was presented on 23 October, and immediately led to vociferous debate about the majority's finding that the government deliberately misled the public about asylum-seekers during the last general election campaign. The report includes material supplied to the committee on the question of whether former ministers and ministerial staff may be summoned by the Senate. The Clerk of the House of Representatives claimed that former Defence Minister Reith and former and current ministerial staff have some kind of immunity, but this claim is refuted by other material supplied to the committee. It was not accepted by any members of the committee, all of whom accepted that the power to summon such persons exists but disagreed about its exercise in this case. In the event, the committee did not summon any witnesses, but took

evidence from an array of public servants and Defence Force officers who appeared on invitation.

#### **UNUSUAL COMMITTEE REFERENCE**

An unusual reference to the Community Affairs References Committee on 16 October requires the committee to seek annual reports from the Ombudsman about the operation of the social security breaches and penalties system, a matter of considerable controversy. By receiving the reports from the Ombudsman the committee will be able to monitor complaints about the operation of the system. The committee is also empowered to take evidence from other persons and report any proposals to improve the system. This reference was initiated by the committee itself.

#### **ANOTHER IRAQ RESOLUTION**

Another resolution on the Iraq question was passed on 22 October, expressing the view that pre-emptive military action against Iraq or any other country should not be taken without evidence of that country's support for international terrorism or its weapons capability presenting a real and present danger.

#### ***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](http://www.aph.gov.au/senate)

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