

DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

hc/pro/prob/14040

No. 173

for the sitting period 11 — 21 August 2003

22 August 2003

ORDERS FOR DOCUMENTS

When possible remedies against government refusals to provide documents in response to Senate orders have been considered in the past, one option always raised was that of deferring consideration of some or all government legislation until documents are produced. This measure has not been resorted to in the past, except in cases where bills have been deferred until information specifically relating to the bills was produced. On 12 August the bills to give effect to the government's ethanol scheme (Customs Tariff Amendment Bill (No. 2) 2003, Excise Tariff Amendment Bill (No. 1) 2003) were deferred until the government produced the documents required by various Senate orders for documents relating to the ethanol affair. The orders go back to 16 October last year, and at first the government promised to produce the documents, but later refused. It was claimed the documents would throw light on the alleged "special deal" between the Prime Minister and Manildra Pty Ltd in relation to ethanol. As with other increases in tariffs, the bills validate tariff increases from the time of the government announcement (see *Odgers' Australian Senate Practice*, 10th ed, p. 319). If the bills are not passed by mid-September the tariff increases will not be validated. The predicament then created may be simplified by the payment of the subsidy which is part of the government's ethanol scheme. (For another reference to the ethanol affair, see below, under Rules of debate.)

Other orders for documents during the period were less contentious. An order relating to Biotechnology Australia made on 25 June was responded to on 12 August with a ministerial statement that more time would be needed to produce the documents. Documents in response to the order were produced on 20 August.

An order for correspondence relating to fishing on 20 August was met with a statement on 21 August that no correspondence of the type described in the order exists.

DELEGATED LEGISLATION

The Senate disallowed on 20 August regulations to extend the printing entitlements of members of the House of Representatives, allegedly to assist government members in the next general election. The motion for disallowance provided an illustration of the principles

applying to amendment of disallowance motions (see *Odgers* pp 354-5). Senator Brown amended by leave his motion for the disallowance of the regulations to confine the disallowance to one of the regulations in the set. When the motion came on for debate, the government attempted to amend it by expanding it to include some other regulations which were covered by the original notice, apparently an attempt to force senators to vote on some other expansions of entitlements. This amendment was rejected.

The tabling of a notice suspending the chairman of the Aboriginal and Torres Strait Islander Commission (ATSIC) on 13 August drew attention to the strange provisions of the relevant statute. If both Houses disallow the suspension, the chairman must be reinstated. If neither House disallows the suspension, the chairman may be dismissed. It appears that if only one House were to disallow the suspension the dismissal could not go ahead, except on some other basis which may or may not exist now or in the future in respect of the chairman's conviction for an offence. No action has been taken in the Senate to disallow the suspension.

Unusual provisions also apply to variations of amendments of the National Capital Plan. The amendment relating to the controversial Gungahlin Drive extension was the subject of a notice of motion for disallowance by Senator Brown. Although the relevant statute provides a limited time for giving notice, there is no time for dealing with a notice. Senator Brown attempted, on 18 and 19 August, to postpone consideration of the notice of motion by a notice of postponement under standing order 67. There was apparently a suspicion that he would postpone the notice indefinitely, thereby leaving the possibility of disallowance hanging over the project and possibly preventing its commencement. Other senators therefore sought to invoke their right under the standing order to have the question for a postponement of a notice put to a vote. It is believed that this is the first occasion on which this has occurred. On both occasions Senator Brown withdrew his notice of postponement, and the motion was voted on and negatived on 19 August.

LEGISLATION

The dispute between the Senate and the government over industrial relations legislation was continued with the rejection at the third reading of the Workplace Relations Amendment (Termination of Employment) Bill 2002 on 11 August. The Australian Democrats had unsuccessfully attempted to amend the bill in committee. Similarly, the Workplace Relations Amendment (Transmission of Business) Bill 2002 was amended on 13 August, and was returned with the government disagreeing to the amendments at the end of the period.

Most of the legislative time of the period was spent on the environment and heritage package of bills, which were finally passed with many amendments on 21 August. A statement by the chair on 18 August reinforced the principle that the rule against an amendment which has already been rejected being put again does not apply where an amendment is put again in a

different context, for example, as part of a different package of amendments (see *Odgers* p. 210). The bill also provided two occasions of amendments being put again by leave to avoid the fate of amendments being determined by misadventure. These instances occurred because the government was relying on the four independent senators to pass the legislation as amended, and only one absence could change the result of votes.

For the deferral of the ethanol bills until documents are produced, see above, under Orders for production of documents.

EXECUTION OF SEARCH WARRANTS IN SENATORS' OFFICES

The Privileges Committee presented on 20 August its report on the case of the execution of search warrants in the office of Senator Harris (see *Odgers* Supplement p. 2, referring to *Odgers* p. 43). The committee reported that the independent assessor it had appointed to examine the documents, which were all the subject of a claim of parliamentary privilege by Senator Harris, had determined that none of the documents seized were authorised for seizure by the terms of the search warrant, and the entire seizure was therefore unlawful. He therefore did not have to determine whether any of the documents were protected by parliamentary privilege. The documents were seized in electronic form but printed out for examination by the assessor. The printed documents were to be returned to Senator Harris, but he agreed to have them destroyed under secure supervision. The printed version of the documents amounted to over 74,000 pages.

The committee reported that police executing search warrants appear to have adopted the practice of sweeping up every piece of information in an office and then taking weeks, months or years to examine the material to determine whether it has any relevance to the matter under investigation. The committee suggested that the problem of examining vast numbers of documents stored on computers should be dealt with by a re-examination of the relevant law, but so as to avoid giving police arbitrary seizure powers and repeating the circumstances of this case.

The committee also repeated its recommendation that guidelines be developed for searches where parliamentary privilege may be claimed. Such guidelines were to have been drafted by the Attorney-General after the committee first made this recommendation in 1999.

COMMITTEES

The difficulty of conducting committee inquiries into contentious matters was illustrated by a dispute on 21 August over an extension of time for the Select Committee on Medicare to report on the government's Medicare legislation which was referred to the committee. While non-government senators emphasised the complexities of the matters to be examined, the

government attacked the committee for delaying the legislation and engaging as technical consultants persons who have been critical of the government's policies.

PROCEDURE COMMITTEE REPORT: QUESTIONS ON NOTICE

The Procedure Committee presented a report on 21 August recommending that the Senate authorise the publication of answers to questions on notice as soon as they are received, to overcome the gap whereby the publication of answers is not protected until the next sitting day's Hansard appears. Consideration of the report was made a business of the Senate item, so that it will have precedence over other business.

RULES OF DEBATE

A debate on the ethanol affair on 14 August illustrated the principle that language is permitted in debate on a substantive motion impeaching the conduct of ministers which would not be permitted in normal debate (see *Odgers* p. 233 and Supplement p. 10). The motion accused the Prime Minister of a "pattern of deceit", and senators were permitted to support that allegation in debate. When a senator attempted to make the same allegation on the adjournment debate, however, he was restrained by the President.

UNPROCLAIMED LEGISLATION

The list of unproclaimed legislation, which is required to be produced annually by standing order 139, was tabled on 19 August.

ODGERS SUPPLEMENT

The latest issue of the Supplement to *Odgers' Australian Senate Practice*, 10th ed, was tabled on 11 August. The Supplement updates the 10th edition to 30 June 2003.

PUTTING OF AMENDMENTS

The question has been asked whether the situation could occur in the Senate of an amendment moved by a senator not being put because it "had no life of its own" or "had not been stated from the chair". When a senator has moved an amendment, unless it is out of order for some substantive reason, for example, it merely reverses another amendment already agreed to, the amendment will always be put to a vote.

STATE OF THE PUBLIC SERVICE

A debate on a matter of public importance on 12 August was the occasion of a discussion on the state of the public service, following revelations that material arising from research about

the effects of the government's higher education policy had been omitted from a departmental report and the unit responsible for the research allegedly dismantled.

JOINT PARLIAMENTARY DEPARTMENTS AMALGAMATION

The motion for the amalgamation of the three joint parliamentary departments was passed on 18 August, when Labor Party senators voted for the motion, while repeating allegations that the government was using "blackmail" to achieve the amalgamation by threatening to make the parliamentary departments pay for increased security expenditure. The motion was the subject of two amendments, an Opposition amendment declaring that this should not occur, and that any excess of the security expenditure over any savings made from the amalgamation should be met by appropriations, and an amendment moved by Senator Brown declaring that there should be no involuntary redundancies as a result of the amalgamation. The first amendment was also allowed by the government to pass in the House of Representatives, with an indication that the government would ignore the amendment if it chose.

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

Inquiries: Clerk's Office
(02) 6277 3364