

DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

hc/pro/prob/14451

No. 187

for the sitting period 29 November—9 December 2004

13 December 2004

SENATE INQUIRY PANACEA

Before the sittings began there were demands for a “Senate inquiry” into the allegations by Mr Tony Windsor that he had been offered inducements by the government not to contest his seat in the House of Representatives at the last election. The demands indicated again that such an inquiry is seen as the answer to all evils.

There were, however, barriers in the way of such an inquiry. Most of the principal players in the matter are members of the House of Representatives, and two of them (Mr Windsor and the Deputy Prime Minister, Mr John Anderson) had made statements in the House of Representatives about the matter. It is a long-established parliamentary convention, strictly observed in the past by the Senate, that one House does not:

- inquire into the conduct of members of the other House
- seek to compel members of the other House to give evidence about any matter
- inquire into proceedings in the other House.

Even if Mr Windsor agreed to give evidence voluntarily, the Senate or its committees could not properly inquire into his conduct as a member, or require Mr Anderson to give his side of the story, or examine Mr Windsor’s and Mr Anderson’s statements in the House of Representatives. It is well established that the Senate may inquire into the conduct of ministers as ministers, but that does not set aside the stated limitations, and even if it could be said that Mr Anderson acted in some ministerial capacity, that would not get any inquiry very far. The only place in which an inquiry could be conducted would be the House of Representatives, but no one expected that the government would allow such an inquiry.

In the event, the matter developed into a general concern about alleged misuse of government grants for regional development, and questions relating to the administration of such grants were referred to the Finance and Public Administration References Committee on 2 December.

ORDERS FOR PRODUCTION OF DOCUMENTS

An order of 2 December required the tabling of exchanges of correspondence relating to the Australian/United States Free Trade Agreement. In a statement on 7 December, the government indicated that the documents were available on the Internet. Senator Bartlett asked the Deputy President whether publication on the Internet was the equivalent of tabling in the Senate, and was told that it was not, but did not pursue the matter further. The Senate has made orders for the publication of documents on the Internet, but a publication on the Internet in response to an order for the tabling of a document would not be a publication pursuant to an order of the Senate within the meaning of the Parliamentary Privileges Act, as publication of such a document could arise only from its tabling, under standing order 167. Because the document was not tabled, the order remains on the Notice Paper as an unfulfilled order.

An order also made on 2 December required the production of determinations made under section 22 of the *Air Passenger Ticket Levy (Collection) Act 2001*. This unusual statutory provision, intended to raise money to compensate employees whose entitlements were lost in the collapse of Ansett Airlines, allows a minister to determine a scheme for payments out of an appropriation of \$500m. The determinations are not subject to tabling or disallowance. The Act was passed as a matter of urgency in response to the Ansett crisis, although the Scrutiny of Bills Committee commented on the unusual provision. The determinations were tabled in response to the order on 6 December.

On 8 December two documents were tabled in response to standing requirements of the Senate which provide for the regular tabling of reports on matters: by the Ombudsman on “controlled operations” (“stings”) by police; and by the Australian Competition and Consumer Commission on anti-competitive practices in health funds. The first document is required by an order inserted in a statute by a Senate amendment, and the second is in a standing resolution.

DELEGATED LEGISLATION

A set of Customs regulations disallowed on 30 November related to the importation of dangerous dogs, otherwise prohibited, for research purposes. It was stated in debate that the government had failed to establish the case for this provision.

A notice of motion was given by Senator Bartlett on 9 December for the Senate to “oppose” the accreditation of management plans under section 33 of the *Environment Protection and Biodiversity Conservation Act 1999*. This unusual provision allows for the instrument in question not to be disallowed by the Senate, but to be “opposed”, which has the effect of preventing the minister bringing it into effect.

The Opposition were unsuccessful in seeking to have some superannuation regulations disallowed on 9 December.

LEGISLATION

There were several bills amended by the Senate containing beneficial provisions which a majority of the Senate was not willing to delay, and therefore when the government rejected the Senate amendments in the House of Representatives the amendments were not insisted on. This group included: Australian Security Intelligence Organisation Amendment Bill 2004; Tax Laws Amendment (Superannuation Reporting) Bill 2004; Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Bill 2004; and Tax Laws (Retirement Villages) Bill 2004.

In another group of bills, however, the government accepted amendments moved by various parties in the Senate. This group included: National Security Information (Criminal Proceedings) Bill 2004; Workplace Relations Amendment (Agreement Validation) Bill 2004; Customs Amendment Bill 2004; and National Water Commission Bill 2004.

The Copyright Legislation Amendment Bill was the subject of the shortest reference to a committee. On the recommendation of the Selection of Bills Committee on 6 December, it was referred to the Legal and Constitutional Legislation Committee for report by the *next day*. Witnesses were heard by the committee that night, and the report duly presented. It is a complex bill which gave rise to considerable debate, but was passed on 7 December.

Many bills were exempted from the deadline for the introduction of government bills under standing order 111. In a new Parliament new bills are put off for 14 days under the deadline, but the shortness of the sittings did not allow this provision to operate.

More government bills were initiated in the Senate in this period than during the last two years, apparently for reasons of scheduling government business. Many of them were bills not disposed of in the last Parliament, and several had been scrutinised by Senate committees.

Senator Brown restored his Constitution Alteration (Right to Stand for Parliament—Qualification of Members and Candidates) Bill on 1 December by taking it back to the beginning of the committee stage, but as amended in its previous consideration in 2003. The bill had failed to pass in May of that year because it did not achieve an absolute majority.

An example occurred on 7 December, in consideration of the Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill, of a senator requiring that the questions for the expeditious passage of the bill under standing order 113(2) be divided.

COMMITTEES

For the shortest committee inquiry into a bill see above, under Legislation. For the reference on regional development grants see above, under Senate inquiry panacea.

Several very significant references were made to committees during the period, for example, to the Employment, Workplace Relations and Education References Committee on 7 December on unfair dismissals, a matter which has troubled the Senate for years, and to the Environment, Communications, Information Technology and the Arts References Committee on 8 December on the vexed issue of media ownership.

The Select Committee on the Scafton Evidence (see Bulletin No. 185, pp 1-2) reported on 9 December on the light that Mr Scafton's statements cast on what the Prime Minister knew, and when he knew it, about the falsity of the "children overboard" claims. Unsurprisingly, the non-government committee members thought that Mr Scafton's evidence indicated that the Prime Minister knew more than he admitted, while the government members found Mr Scafton unconvincing. Considerably more information about the handling of the matter, however, was revealed.

When the resolution establishing the joint committee on Corporations and Financial Services was passed on 29 November, Senator Chapman, the chair of the committee, successfully moved an amendment allowing the membership of the committee to be drawn from different numbers in the two Houses. It had already been pointed out that this was inconsistent with the statute providing for the committee, the *Australian Securities and Investments Commission Act 2001*, which provides that the committee must have equal numbers from each House. Senator Chapman explained that equal numbers would be appointed for the time being, until the Act could be amended, but this would involve the two Houses making a membership provision allowing appointments contrary to the statute. A message was sent to the House of Representatives about the amendment, but on the following day Senator Chapman had been persuaded that his scheme should be abandoned, and a further message was sent with the resolution unamended.

SCRUTINY OF BILLS COMMITTEE

The Scrutiny of Bills Committee received renewal on 29 November of its reference on entry and search provisions in legislation. The committee needed the approval of the Senate to renew the reference because, unlike the continuing references to that committee and the other standing committees, such as Regulations and Ordinances and Privileges, the reference was not part of the committee's normal work.

APPROPRIATIONS AND STAFFING COMMITTEE

The Appropriations and Staffing Committee reported on 8 December on the transfer to the Department of Parliamentary Services of an additional \$1m over and above the money earmarked for the security services which were transferred to that department in June. In effect, this was a free gift from the Senate Department to the Department of Parliamentary Services to enable the latter to meet its security commitments. The committee recommended that the Senate endorse the committee's view that any further additional funds for security should be met out of additional appropriations to, or savings within, the Department of Parliamentary Services. The committee also noted that the amalgamation of the three joint departments has not saved the amount of money claimed for it.

The committee also reported on an esoteric question about whether certain payments to international organisations should be in Appropriation Bill (No. 1) or Appropriation Bill (No. 2). This question had been the subject of correspondence, included in the report, between the Clerk and the Audit Office.

The Senate endorsed the committee's report on its presentation.

FLAG WARS

The Senate passed on 12 May a resolution "inviting and authorising" the President to fly the Eureka flag at the Senate entrance to commemorate the 150th anniversary of the Eureka rebellion on 3 December. It became apparent that the President would decline this invitation, on the basis that the Eureka flag is not recognised under the Flags Act. It was reported in the press that the Prime Minister had forbidden the flying of the flag at Parliament House. There was much debate, in and out of the Senate, about the significance of the event and the flag, with senators from both major parties declaring that neither should be regarded as belonging to any faction. Notice of another motion was given to direct to the President to display the flag inside the Senate entrance. The reason for the change of location was that it was apprehended that the Speaker of the House of Representatives might claim a veto over the flying of flags exterior to the building. A precedent for the motion was the Senate order of 1992 directing that national flags be displayed in the chamber. As part of a compromise, the motion was changed to a request to the President and passed on 30 November, and the flag was duly displayed inside the Senate entrance on the anniversary. The flag then displayed is now in the Clerk's Office.

ACCOUNTABILITY REPORT

The decision to inquire into the administration of regional development grants was an accountability advance; sufficient questions were raised about these grants to warrant closer parliamentary scrutiny.

The attention drawn to the determinations under the Air Passenger Ticket Levy (Collection) Act was a reminder that emergency situations can result in legislation which confers undue discretion on ministers, and emergency legislation requires the same level of scrutiny as other bills.

UNREPORTED JUDGMENTS

In *Odgers' Australian Senate Practice* (the 11th edition of which is imminent), various court judgments are cited as “unreported”, that is, not included in the regular law reports. Sets of these judgments, other than those of purely historical interest, have been placed in the Senate Resource Centre and the Clerk’s Office for anybody who wishes to consult them.

SENATE DAILY SUMMARY

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