

# DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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**for the sitting period 7—17 March 2005**

**18 March 2005**

## **PARLIAMENTARY PRIVILEGE**

A memorandum of understanding and Australian Federal Police Guidelines agreed to by the President, the Speaker, the Attorney-General and the Minister for Justice and Customs, governing the execution of search warrants in the premises of senators and members, were tabled and debated on 9 March. The documents provide that any executions of search warrants in the premises of senators and members are to be carried out in such a way as to allow claims to be made that documents are immune from seizure by virtue of parliamentary privilege and to allow such claims to be determined by the House concerned. The agreement underlying these documents is the result of several years of consideration by the Senate, successive Presidents and the Privileges Committee, arising from the committee's consideration of various cases (see *Odgers* 11th ed, pp 46-7).

Telstra reported on 7 March on steps it has taken to train its officers in their parliamentary accountability responsibilities. This requirement was imposed on the telecommunications carrier by the Senate after the Privileges Committee reported in August 2004 (119<sup>th</sup> Report) on a case of alleged misleading evidence by Telstra officers.

The Privileges Committee reported (120<sup>th</sup> Report) on 8 March on the case of the unauthorised disclosure of the unrepresented report of the Select Committee on the Free Trade Agreement between Australia and the United States. Contents of the report were disclosed by the Labor Party members of the committee at a press conference before the report was presented. The Labor senators had circulated at their press conference a document supposedly summarising their views on the free trade agreement but clearly referring to the contents of the impending report. The committee found that the senators had been "stampeded" into holding the press conference by earlier "leaks" of the deliberations of the committee by persons unknown. The committee recommended that contempts not be found in the circumstances, and the Senate accepted this finding.

The committee presented on 15 March another report (121<sup>st</sup> Report) on unauthorised disclosures, relating to the Community Affairs References Committee. The Privileges Committee reported that it was unable to discover the source of the "leaks", but stated that members of the committee were the most likely culprits. Arising from this report, the Senate accepted on 16 March a reference to the committee for it to conduct a general inquiry into how unauthorised disclosures should be treated, with a reporting date in June.

#### **ORDERS FOR PRODUCTION OF DOCUMENTS**

Two orders for documents were made on 10 March on the Australian Competition and Consumer Commission, following a considerable line of precedents of orders requiring that body to produce reports to the Senate (see *Odgers* 11th ed, pp 439-40). One of the orders provided that the required document be produced to the Environment, Communications, Information Technology and the Arts References Committee, on a confidential basis, by the following Thursday. The document was duly produced to the committee (for precedents of such orders see *Odgers* 11th ed, p. 440). The other order is returnable by 10 May.

Other orders for documents also met with success. Two passed on 17 March, relating to apprenticeship training and teacher education, were returnable later on the same day, and the documents were duly produced towards the end of the sitting. An order of 8 March for any ministerial instructions relating to information about abortion was met by a ministerial statement on 17 March indicating that no such instructions exist. An order passed on 16 March relating to gene technology is returnable on 11 May.

#### **MINISTERIAL ACCOUNTABILITY**

The report on estimates hearings by the Foreign Affairs, Defence and Trade Legislation Committee, presented on 14 March, referred to the refusal by an officer and a minister to answer a question at an estimates hearing without articulating any public interest ground for that refusal. The Opposition reservation attached to the report referred to relevant past resolutions of the Senate, going back to 1971, and listed the following principles drawn from these resolutions:

- (a) ministers and officers do not have a discretion to decline to answer relevant questions;
- (b) any refusal to answer a relevant question should be made by a minister on the basis of a properly advanced claim of public interest immunity based on specified grounds; and
- (c) it is for the committee in the first instance and the Senate ultimately to consider whether a properly advanced claim of public interest immunity is to be sustained.

This was reinforced in debate on the report. It is expected that this matter will be watched at the next round of estimates hearings in May.

## **ESTIMATES REPORTS**

Estimates reports of the other committees were generally substantial, referring to matters raised during the hearings, and were debated on presentation. The Finance and Public Administration Legislation Committee referred to the unsatisfactory allocation of the new Department of Human Services and its associated agencies, which caused difficulties for, and overburdened, that committee. The report of the Community Affairs Legislation Committee also referred to this matter. The tardiness of some departments in answering questions on notice lodged at the May 2004 hearings and under the special resolution of the Senate of 18 November (see Bulletin No. 186 p. 4) was the subject of references in reports and debate. The resolution was a substitute for the supplementary hearings which should have occurred in November. The Legal and Constitutional Legislation Committee referred to its invitation to the former Guantanamo Bay detainee, Mr Mamdouh Habib, to respond to allegations made about him in evidence by the Director-General of ASIO and the Commissioner of the Australian Federal Police. This invitation was in accordance with the Senate's right-of-reply procedures applying to committees (see *Odgers* 11th ed, pp 418-20).

## **COMMITTEES: SIGNIFICANT REPORTS**

The report of the Select Committee on the Administration of Indigenous Affairs and another report by the Community Affairs References Committee on children in care were presented on 8 and 17 March, respectively. These inquiries were notable for their high level of public participation, with many people involved in them attending for the presentation of the reports.

The Rural and Regional Affairs and Transport Legislation Committee presented two reports on 17 March on import risk analyses by Biosecurity Australia. The inquiries arose from the committee's standing oversight, under standing order 25(2)(b), of the agency. The unanimous reports were highly critical of the administration of the import risk analysis system.

The President reported on 7 March on access granted to unpublished committee documents under standing order 37(3).

## **COMMITTEES: SIGNIFICANT INQUIRIES**

A Select Committee on Mental Health was appointed on 8 March as an outcome of the Cornelia Rau affair, after it was pointed out that the unfortunate treatment of Ms Rau in an immigration detention centre highlighted the inadequacy of treatment of persons with mental health problems generally.

The Foreign Affairs, Defence and Trade References Committee was given a reference on 8 March arising from the matter of interrogations/interviews in Iraq.

Extensive terms of reference relating to telecommunications regulation were given to the Environment, Communications, Information Technology and the Arts References Committee on 14 March, reflecting the growing debate about the future of Telstra.

## LEGISLATION

Two appropriation bills were presented to appropriate money to cover costs of the tsunami relief effort. One of them was presented as a bill for the ordinary annual services of the government, but it was explained that it was to replace money which departments had spent out of their ordinary annual services votes on tsunami relief. This raised two questions. How could ordinary annual services money be spent on tsunami relief in foreign countries, which is clearly not part of ordinary annual services of the government? Probably the answer would have been that the Parliament would retrospectively approve this irregularity by passing the bills. The other question was whether replacing the money spent on tsunami relief could be said to be appropriating money for the ordinary annual services, a very dubious proposition. In the event, the bills were passed and these questions remained academic.

The second bill provided an appropriation of \$1 billion, half of which was to be extended by way of loans. This was not provided for in the bill, but the money was to be credited to a special account for that purpose. Senator Nettle moved an amendment to provide that all of the money would have to be extended by way of grants and not loans. Another academic question was considered: whether this amendment should have been moved in the form of a request. It was considered that this was not necessary, because, if the amendment had been carried, it would not have increased a "proposed charge or burden on the people" within the meaning of the third paragraph of section 53 of the Constitution. The money would still have been appropriated, and, although some money would not have been returned to the government in the future, in the absence of any other legislation to dispose of it the "burden on the people" would have remained the same.

The President introduced a bill on 9 March to amend the *Parliamentary Service Act 1999* to provide for the statutory establishment of the position of Parliamentary Librarian. This carried out an undertaking to strengthen the independence of the Library when the three joint parliamentary departments were amalgamated. Opposition amendments to the bill were carried to strengthen the provisions relating to the librarian and to provide for the statutory establishment of a Security Management Board. The latter step was recommended by the Appropriations and Staffing Committee to ensure that, when security services were transferred to the combined joint department, Senate oversight of them would not be weakened.

Several bills were amended in the Senate but the amendments not insisted on when the government rejected them in the House of Representatives, because a majority of the Senate did not want to jeopardise the bills. Included in this category were the Aboriginal and Torres

Strait Islander Commission Amendment Bill 2005 (to abolish ATSIC), the Australian Communications and Media Authority Bills and the Broadcasting Services Amendment (Anti-Siphoning) Bill 2004. In respect of the Administrative Appeals Tribunal Amendment Bill 2005, the government had accepted some recommendations of the Legal and Constitutional Legislation Committee, and the Bankruptcy and Family Law Legislation Amendment Bill was the subject of a government undertaking to further examine the matter in disagreement. Several non-government amendments to the National Health Amendment (Prostheses) Bill 2005 were accepted by the government.

#### **DELEGATED LEGISLATION**

The Regulations and Ordinances Committee tabled on 9 March, in accordance with its usual custom, a document setting out its scrutiny of delegated legislation during 2004. The committee has been extremely active last year and this year.

The committee withdrew on 17 March disallowance notices under standing order 78 on the last day for resolving the notices following last-minute talks with ministers.

#### **ACCOUNTABILITY REPORT**

The concern of senators that ministers should not refuse to answer questions without advancing some public interest ground, for a committee and the Senate to consider, indicated an apprehension that this practice may grow in future.

The diligence of senators in estimates hearings in pursuing information about matters of public concern raised the accountability index, as estimates hearings always do.

The new select committee, the two substantive committee references and the orders for documents also indicate a determination to pursue such matters.

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

Inquiries: Clerk's Office  
(02) 6277 3364