

DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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18 August 2006

GOVERNMENT BILL ABANDONED

The Order of Business for the morning of 14 August indicated that a message would be received from the House of Representatives forwarding the government's Migration Amendment (Designated Unauthorised Arrivals) Bill 2006 and that the bill would be considered immediately. When the Senate met, however, the message was not reported. The government had decided to abandon the bill because of the likelihood of its defeat in the Senate by "rebel" government senators voting against it.

Under standing order 155 a message from the House of Representatives is to be reported to the Senate by the President "as early as convenient", which in practice means when the government is ready to proceed with the bill. There are several precedents for the reporting of messages being delayed and for no action being taken on a bill after a message is reported, in cases where the government has decided not to proceed with the bill for one reason or another. In this case the message was reported later in the day and no action taken on it. By practice the reasons for such a decision are given and recorded.

RESTRUCTURING OF COMMITTEES

The Procedure Committee presented on 10 August its report on the government's proposal to restructure the committee system. The committee approached its task by assuming that the amalgamation of the legislation and references committees would proceed and that the government would have the majority and chairs of all committees, while recording that the non-government senators opposed this measure, and that its task was to sort out the details of the proposal. None of the subsidiary elements of the government's proposal, such as having ten committees and changing their responsibilities and subject coverage, were recommended by the Procedure Committee, because, it was said in debate, they did not stand up to analysis or were found to be impracticable.

The committee's report was adopted and the standing orders amended accordingly on 14 August, but not without lengthy debate in which non-government senators characterised the proposal as a move by the government to control the conduct of inquiries of the committees, thereby weakening accountability. As has been pointed out many times, the survival of an effective committee system with government party majorities will depend on the extent to which government senators manifest some independence in their committee work.

UNANSWERED QUESTIONS ON NOTICE

The procedure whereby a senator can ask after question time for an explanation of any failure to answer by the prescribed deadline questions placed on notice in estimates hearings, which was adopted in November 2005 by amendment of standing order 74, was employed for the first time on 14 August when Senator Carr referred to a series of unanswered questions and exercised his right to initiate a debate on the failure to answer them in time. As is usual when this procedure is used for ordinary questions on notice, the minister gave an undertaking to expedite replies while complaining about the number and difficulty of questions.

SEARCH WARRANTS

The President tabled on 15 August a memorandum of understanding entered into with the Tasmanian government to regulate the execution of state search warrants in the premises of senators and members. This follows the similar agreement with the federal government, and provides in identical terms for the determination of claims of parliamentary privilege in respect of materials seized under warrant (see Odgers 11th ed. pp 46-47 and Supplement).

COURT ACTION

An unsuccessful censure motion against the Minister for the Environment and Heritage, Senator Ian Campbell, on 9 August, provided an illustration of the importance of court action as an alternative to parliamentary action in relation to government decisions. The motion followed the consent orders of the Federal Court whereby the minister's decision in relation to the Bald Hills wind farm was set aside following litigation by the company concerned in the proposed wind farm.

REFERRAL OF BILLS TO COMMITTEES

In debate on a motion for an amendment to the adoption of the report of the Selection of Bills Committee on 9 August, the government refused to allow a private senator's bill to be referred to a committee on the basis that it did not agree with the bill. The bill would remove the executive government's power to disallow laws passed by the ACT Legislative Assembly. If the referral of bills is to be blocked on this basis, this will restrict the system

for the consideration of bills by committees. In the past, the practice has been that bills are referred if any group in the Senate wishes them to be referred.

By contrast, a report by the Community Affairs Legislation Committee on Senator Stott-Despoja's Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005 was presented and debated on 17 August. The fact that that bill was strongly opposed did not prevent the process of examination by committee hearings.

COMMITTEES RECOMMENDING AMENDMENTS

On the other hand, legislation committees have continued to recommend amendments to bills in spite of the reduced success rate in getting the government to accept them since the government majority took effect. For example, two reports from the Legal and Constitutional Legislation Committee on 8 August recommended amendments to bills relating to forensic procedures in criminal investigations and import controls. The bills have not yet been considered, and it will be interesting to see if the amendments are accepted.

ONGOING COMMITTEE SCRUTINY

The Foreign Affairs, Defence and Trade Legislation Committee presented on 17 August its First Progress Report on Reforms to Australia's Military Justice System, indicating that the committee intends to diligently pursue its task of following up its highly critical report on the administration of justice in the Defence Force.

ORDER FOR DOCUMENTS REJECTED

A motion for an order for documents was rejected on 17 August, although the document concerned, a report relating to the use of work visas by a particular company, was expected to be released in any event. This confirms the virtual extinction of this method of gaining information.

APPROPRIATIONS

The annual report of the Appropriations and Staffing Committee, presented on 16 August, contains material indicating that the committee has asked the government to explain its recent use of appropriations supposedly for the ordinary annual services of the government for expenditures clearly not falling into that category (see Odgers 11th ed. pp 282-284 and Supplement).

COMMITTEE DOCUMENTS

The Finance and Public Administration Committee took the unusual step of tabling on 8 August documents relating to inquiries it had carried out almost ten years ago, for the completion of the record. Under standing order 25(16) unpublished documents by the legislative and general purpose standing committees relating to completed inquiries are in the custody of the Senate and cannot be released except by resolution of the Senate. The documents concerned, however, were either quoted in the report or closely related to material in the report, so their tabling could be regarded as simply correcting a gap in the tabled material.

BUSINESS OF THE SENATE

The precedence given to General Business on a Thursday under standing order 59 is only over government business, not Business of the Senate items such as motions to disallow legislative instruments or to refer matters to standing committees. If such Business of the Senate items are not concluded or adjourned on Thursday morning, they override General Business in the afternoon. This occurred on 17 August, when uncompleted debates on Business of the Senate items prevented the consideration of General Business except for a short time left for motions relating to government documents.

DEFERRED DIVISIONS

The temporary order bringing back to 4.30 pm (from 6.00 pm) the prohibition on divisions on Thursdays was renewed on 10 August, and was employed on 17 August when divisions on two Business of the Senate items were deferred to the next day of sitting, with a subsequent motion fixing the time when the votes will be taken.

SENATORS' INTERESTS

The Senate adopted on 10 August the recommendation of the Senators' Interests Committee that the time for the notification of alterations of senators' interests be extended to 35 days.

UNPROCLAIMED LEGISLATION

The list of legislation passed but not proclaimed to come into effect, which is required to be tabled under standing order 139(2), was presented on 17 August. The list shows that, apart from such old favourites as the *Koongarra Project Area Act 1981*, the *Interstate Road Transport Act 1985*, and the *Protection of the Sea Legislation Amendment Act 1986*, most of

the acts not yet proclaimed are of recent vintage, so some cleaning up of the statute books must be taking place.

ACCOUNTABILITY REPORT

Whether the change to the committee structure is an accountability negative now depends, as has been pointed out, on the independence of government senators on committees.

The incident relating to the Selection of Bills Committee report is not a good omen for the liveliness of the system for committee consideration of legislation.

Orders for documents may well now be extinct.

RELATED RESOURCES

The *Dynamic Red* records proceedings in the Senate as they happen each day.

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, these documents may be reached through the Senate home page at www.aph.gov.au/senate

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