

DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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PARLIAMENTARY PRIVILEGE

The President tabled advice from the Clerk and related correspondence on 22 February concerning the issuing of subpoenas to three senators to give evidence in a criminal trial on a sitting day. Section 14 of the *Parliamentary Privileges Act 1987* codified this long-standing immunity of members of Parliament against compulsory attendance at a court or tribunal on or near a sitting day. There is nothing to prevent senators giving evidence voluntarily (preferably with leave from the Senate) but the subpoenas were of no effect. In a response to the Clerk, an officer of the Northern Territory Director of Public Prosecutions conceded this point.

A report of the Public Works Committee into an unauthorised disclosure of an in camera briefing by a committee member who was also a member of the House of Representatives was presented out of sitting and tabled on 22 February. The Speaker had made a statement to the House that the matter would not be pursued by means of a reference to the Privileges and Members' Interests Committee as the Public Works Committee had already investigated the matter in accordance with Senate procedures (see orders of the Senate of 20 June 1996 and 17 September 2007). The member had confessed and apologised and the matter was considered dealt with. The Speaker noted that a code of conduct might have been of assistance in this case. How a code of conduct might have assisted in a straightforward case of contempt, where the House already had the option of making a finding to that effect on the basis of the committee report and imposing a penalty, is not clear.

Recommendations made by the Committee of Privileges in its 142nd report (on the Godwin Grech matter) were finally adopted on 25 February.

CENSURE MOTION

Senator Bob Brown, on 23 February, moved a motion to censure the Government in relation to problems in the delivery of the various climate change programs, including the troubled home insulation program. This was the first censure motion moved in the Senate since 2005 when the Senate censured former immigration minister, Senator Vanstone, for the administration of immigration detention policies. Senator Brown's motion included a second part, calling for the integration of climate change and energy programs into a single department and ministry. An amendment was moved by the Opposition to remove this part of the motion. When the votes on the amendment were equally divided, the Chair announced that, in keeping with Senate precedents, a proposition which lacked majority support was not carried, and that part of the motion was therefore omitted. The amended motion was carried by a majority and Senator Brown then exercised his right under SO 154 to move, without notice, that the resolution of censure be transmitted to the House of Representatives for its concurrence. The message was reported in the House on 24 February and its consideration deferred till the next sitting (on division).

LEGISLATION

The past few sitting weeks have seen several rejections of parts of the compound motion under SO 113 to apply the expedited proceedings to bills, but for what purpose has not been entirely clear. Two of three private health insurance incentives bills, required to be dealt with separately on 4 February, were brought together by leave on 22 February, leaving only the bill removing or reducing the 30 per cent rebate on private health insurance premiums to be dealt with separately. The two bills were negatived on 24 February (see below). Later on 22 February, the motion that the reintroduced carbon pollution reduction bills may proceed without formalities was negatived, thereby requiring different stages of the bills to be dealt with on separate days. The same tactic was employed the last time the CPRS bills came before the Senate in November 2009 (see Bulletin No. 237) but the limitations thereby imposed were subsequently waived by agreement.

The CPRS bills failed to obtain exemption from the bills cut-off order on 24 February, and a motion to refer the bills to the Economics Legislation Committee was defeated on 25 February. With further consideration of the bills deferred till May, it looks less likely that these bills will also provide a trigger under section 57 of the Constitution, because there is insufficient time for the second round of the bills (assuming the first round of bills is defeated) to be determined before 11 August. Section 57 requires a three-month interval between the first rejection of bills by the Senate and the passage of the second round of bills by the House. It also prevents a double dissolution within six months of the expiry of the House of Representatives. As the House first met on 12 February 2008, it will expire on 11 February 2011. On the other hand, it could be argued that the failure of the Senate to send

the bills off to a committee, combined with the failure to exempt them from the bills cut-off order, could constitute a failure to pass them within the meaning of section 57. As the former Clerk pointed out many times in advice on this question, the Government needs only to persuade the Governor-General that the grounds exist for a dissolution.

With the defeat of the Fairer Private Health Insurance Incentives (Medicare Levy Surcharge) Bill 2009 [No. 2] and a related bill at their second reading, the government does have triggers for a dissolution under section 57, making a total of 13 bills which have been twice defeated.

Senate amendments to the Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Bill 2009 (see Bulletin No. 238), disagreed by the House of Representatives, were not insisted upon on 22 February. The message in relation to the Tax Laws Amendment (Political Contributions and Gifts) Bill 2009 (received in June last year) was also considered (during the time for non-controversial legislation), with the Senate not insisting on its amendments and agreeing to amendments made by the House instead.

PRIVATE SENATORS' BILLS

An attempt to rearrange business to bring on a private senator's bill on 24 February failed. Although the bill was in the joint names of Senator Bob Brown and Senator Abetz, the Opposition opposed the motion to bring on the bill. During the debate, reference was made to the issue, currently before the Procedure Committee, of finding adequate opportunities for the consideration of private senators' bills. On 25 February, a bill scheduled for debate during general business time was brought on earlier, given precedence and a time limit of 30 minutes agreed to. A brief second reading debate on the Marriage Equality Amendment Bill 2009 ensued, with informal arrangements made on speaking times. The motion for the second reading was then defeated (on division). The bill was brought on early to beat the restrictions on divisions being held after 4.30 pm on Thursdays, and possibly to demonstrate that private senators' bills could be dealt with expeditiously.

ORDERS FOR PRODUCTION OF DOCUMENTS

An order of the Senate of 3 February 2010 for production of documents relating to landholder agreements in the Solomon Islands was partially complied with on 22 February. It is understood that there may be more documents forthcoming.

A new order for documents relating to the Overseas Students Assurance Fund was agreed to on 23 February and responded to the following day with a statement that more time was needed to assemble what was expected to be a large quantity of documents. However, it was the Government's intention to table them as soon as the processes of identification, collation

and assessment had been completed. Another order, for documents relating to proposed sites for a nuclear waste disposal facility in the Northern Territory was agreed to in part on 25 February.

Pursuant to an undertaking, rather than an order, the Minister for Defence, Senator Faulkner, tabled several DVDs on 25 February, containing still images and video footage of the explosion on the SIEV 36 off Ashmore Reef, together with correspondence between the Chief of the Defence Forces and the Northern Territory Coroner, and an internal report by an inquiry officer. The documents were tabled following the completion of the inquest. In accordance with practice, the minister also provided printouts of the static visual material on the DVDs.

COMMITTEES

The Scrutiny of Bills Committee received a reference on 25 February on its future role and direction. The terms of reference include consideration of the committee's role in relation to scrutiny of human rights obligations, and parliamentary mechanisms for the scrutiny and control of delegated legislation. For the purposes of the inquiry, the committee was given the power to take evidence in public which it does not normally enjoy under its existing standing order.

Legislation committee reports on bills often refer to comments made by the Scrutiny of Bills Committee. That committee has taken the process a step further in its latest Alert Digest (No. 2 of 2010) by noting that, where it has made substantive comments on a bill and where it is likely that the bill will be referred to a legislation committee, the committee will forward its observations to the relevant committee so that they may be taken into account during the inquiry.

The Foreign Affairs, Defence and Trade Legislation Committee tabled a report on 25 February on the Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2008 [No. 2], a private senator's bill introduced by Senator Ludlam. The committee did not hold public hearings on the bill, claiming that the topic had been under debate for several decades and the submissions to the inquiry raised no new issues. Instead, Senator Ludlam took the unusual step of convening a private forum on the bill and inviting experts (some of whom had provided submissions to the inquiry) to present their views. A transcript was taken which Senator Ludlam attached to his dissenting report. Some risk attaches to such proceedings because they are not part of the official proceedings in parliament and may not attract parliamentary privilege at the time (and senators undertaking such exercises in the past have been urged to warn participants of the status of the "hearing"). The inclusion of the transcript in the report, however, means that subsequent publication of it in that form is privileged.

Legislation Committees were finally able to present their reports on additional estimates on 25 February, the order for their presentation having been carried over from 23 February because it had not been reached due to other business. Reports of the Finance and Public Administration, Education, Employment and Workplace Relations, and Legal and Constitutional Affairs Legislation Committees included commentary on the use of the order of the Senate of 13 May 2009 for handing claims of public interest immunity. The Finance and Public Administration Legislation Committee's report also contained some stern words about the need for orderly conduct at estimates hearings, the absence of which could lead to undermining of the estimates process.

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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