

Procedural Information Bulletin No. 4

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SENATE COMMITTEE EVIDENCE AND COURT PROCEEDINGS

The matter of the limitation which the law of parliamentary privilege imposes upon the use of parliamentary committee evidence in court proceedings was again before the Senate during the recent sittings.

When counsel for the defence in the proceedings relating to Judge Foord indicated an intention of cross-examining witnesses on statements made before one of the Senate committees, counsel for the President appeared and objected, and the magistrate made a ruling to the effect that a statement made to a Senate committee was protected by parliamentary privilege and could not be examined in court proceedings. The defence then petitioned the Senate to waive the privilege attached to the statement so that the witness could be cross-examined upon it.

On 16 April 1985, after debate, the Senate, on the motion of the Minister representing the Attorney-General, Senator the Hon. Gareth Evans, QC, agreed to a resolution declining to accede to this petition. The motion for the resolution was supported by Senator Durack and Senator Haines. The grounds for refusing the petition, as stated in debate, were: first, the Senate did not have the power to waive the privilege; secondly, even if the Senate had the power of waiver, it was not desirable in principle to waive the privilege; and thirdly, it appeared that no prejudice to the defence case would result from the Senate's refusal of the petition.

On 23 April Senator Missen moved a motion to the effect that the Senate reconsider its decision not to accede to the request contained in the petition. In the debate Senator Missen indicated his belief that it is possible for the Senate to waive the privilege attaching to evidence given before a committee. Senator Gareth Evans and Senator Durack repeated the points which they had made in the previous debate. In particular, Senator Evans referred to the confusion which arises from the practice of the British House of Commons of granting permission for evidence as to parliamentary proceedings to be admitted in court. This matter was referred to in Bulletin No. 3. The practice has apparently misled some people into concluding that

it is possible for permission to be granted for such evidence to be admitted for any purpose. Senator Missen's motion was negatived on the voices.

Because of the fundamental importance of these matters, the Hansard extracts of all of the debates have been reprinted in the form of a pamphlet, and a file consisting of annotated notes and relevant authorities was prepared. Staff who wish to study the matter further may request a copy of the Hansard pamphlet and the file by ringing Peg Grossbechler on 7254.

SCRUTINY OF BILLS COMMITTEE — AMENDMENTS TO BILLS

On 17 April a series of Government amendments and one Democrat amendment were moved in the Senate to the Extradition (Commonwealth Countries) Amendment Bill and the Extradition (Foreign States) Amendment Bill to overcome objections to the bills referred to by the Scrutiny of Bills Committee. The amendments, all of which were agreed to by both Houses, mainly had to do with searches and seizures, and they represent another outstanding success for that committee.

REFERENCES TO CONSTITUTIONAL AND LEGAL AFFAIRS COMMITTEE

On 19 April the Senate passed a resolution referring to the Constitutional and Legal Affairs Committee the matter of a national Bill of Rights, but the resolution restrained the committee from considering the provisions of any Government bill unless authorised to do so by the Senate.

To Senator Tate's motion to refer the matter to the committee Senator Durack moved an amendment to the effect that the committee should not consider the provisions of any Government bill unless the bill had been introduced into the Senate and expressly referred to the committee. To deal with the possibility that such a bill might be introduced in the House of Representatives Senator Durack proposed to substitute the word "Parliament" for "Senate" in his amendment. Such a wording, however, could be taken as an indication that the Senate believed that it could refer to one of its committees a bill which was in the House of Representatives. Senator Durack therefore amended his amendment to provide that the committee was not to consider such a bill unless it had been introduced into the Parliament and the Senate had authorised the consideration of the provisions of the bill.

The debate on this reference indicates the desirability of references to standing committees being explained and debated rather than passed as formal motions without debate.

SENATOR HARRADINE'S BILL

Senator Harradine has introduced a private senator's bill to prohibit, so far as the Commonwealth has power to do so, and to deny any Commonwealth funds to experimentation involving human embryos created by in vitro fertilisation. It is interesting to note that a similar bill was introduced by a private member into the British House of Commons and was passed by that House.

PRIVILEGES REFERENCES

On 23 April the Privileges Committee was given another reference by the Senate. The reference relates to the alleged improper disclosure and misrepresentation of an amendment which was prepared for moving in the Senate.

SITTING OF THE SENATE

On 23 April the Leader of the Government in the Senate, Senator Button, made a statement indicating that it is proposed to ask the Senate to meet during the week beginning 27 May, which means that after the Senate next meets on 7 May it will sit for four weeks.