

Procedural Information Bulletin No. 7

For the sitting period 10 to 19 September 1985

PARLIAMENTARY PRIVILEGE (CONT.)

It appears that this subject will be a feature of this Bulletin for some time to come.

On Wednesday, 11 September Mr President made a statement in the Senate reporting on the appearance of counsel instructed by him at the trials of Mr Justice Murphy and Judge Foord. He also presented to the Senate documents including the judgment of Mr Justice Cantor of 5 June (which was referred to in previous issues of the Bulletin) and a written submission which was made on his behalf to the court at the beginning of the trial of Judge Foord on 5 September. (The result of that appearance was that the trial judge in that case, Mr Justice Maxwell, reaffirmed Mr Justice Cantor's judgment without giving any reasons.) Mr President stated that he was drawing these matters to the attention of the Senate because of the serious implications of the Cantor judgment for the Parliament. He also indicated that Mr Speaker supported the views which he had expressed on the judgment.

In the debate that followed, the Minister for Resources and Energy, Senator Gareth Evans, the Deputy Leader of the Opposition, Senator Durack, and the Leader and the Deputy Leader of the Australian Democrats, Senators Chipp and Haines, indicated their support for the action which the President had taken and for the view which he had expressed as to the unsatisfactory nature of the Cantor judgment. Staff are urged to read Mr President's statement, the debate and the written statement which was made at the Foord trial. The latter document contains a comprehensive statement of the interpretation advanced by the two Houses of the immunity of parliamentary proceedings from question in the courts, and a critique of the Cantor judgment.

Mr President indicated that he was giving consideration to further action which may be taken in relation to this matter. The view was expressed by Senator Durack in the debate that if the Parliament is unsuccessful in seeking a reversal of the Cantor judgment in the courts, legislation should be passed under section 49 of the Constitution to achieve that result.

On Monday, 16 September Senator Jessop asked Mr President a question about the implications of the Cantor judgment for the proposed appearance before the Public Accounts Committee of Dr Edelsten. Senator Jessop asked whether this case provided a pertinent example of the difficulties which will be faced by committees if the judgment is allowed to stand. Mr President expressed the hope that all chairmen of parliamentary committees will give consideration to the content of his statement.

ROYAL COMMISSION REQUEST

On Thursday, 19 September Mr President presented a letter from the Secretary to the Royal Commission of Inquiry into Alleged Telephone Interceptions, requesting that certain evidence taken in camera by the Select Committee on the Conduct of a Judge be made available to that commission.

No action was taken to grant or refuse the request. Senator Tate, chairman of the former committee, advised the Senate that it would be unwise to grant the request because, with the matter of the Cantor judgment unresolved, the Senate could not be certain as to the use which would be made of the evidence by the commission. It would not be clear whether the commission would adhere to the view of the law advanced by the two Houses, or whether it would regard itself as authorised by the Cantor judgment to make what the Parliament would regard as improper use of the evidence. Senators Durack and Haines supported this view, and debate on a motion to take note of the letter was adjourned.

PRIVILEGES COMMITTEE REPORT

On 16 September the Privileges Committee reported on the matter which had been referred to it on 23 April, relating to the alleged improper disclosure and misrepresentation by a departmental officer of an amendment prepared for moving in the Senate. In view of explanations received by the committee, it recommended that no further action be taken in the matter, but reminded officers who receive information in the course of their employment of their obligation to treat it in accordance with their responsibility as public servants. On Wednesday 18 September the report was adopted without debate.

ESTIMATES COMMITTEES

A large percentage of the sitting time during the two weeks was taken up by estimates committees. The sittings of the committees have been some of the most intensive and extensive questioning of departments in the history of estimates

committees, and senators have taken the opportunity to probe a number of controversial matters.

COMMITTEE REPORTS

Reports presented during the two weeks included the Annual Report of the Appropriations and Staffing Committee with the Annual Report of the Department of the Senate, a comprehensive paper on the work of the Scrutiny of Bills Committee, updating the paper which was presented in 1983, and a report of the Science, Technology and Environment Committee on Annual Reports.

SUPERANNUATION BILL

Disputation arose in the Senate about the Superannuation Legislation Amendment Bill 1985, which is of personal interest to all permanent staff. The bill provides for the Superannuation Fund Investment Trust to be administered by five persons, three of whom are to be nominated by the Australian Council of Trade Unions and one of whom is to be nominated by the Minister after consultation with that body. Different amendments have been circulated by the Opposition and the Australian Democrats to alter what has been called the proposed control of the fund by the ACTU. Future proceedings on the Bill therefore promise to be interesting.

URGENCY MOTIONS

For the second time, a problem has arisen because of the provision of standing order 64 forbidding the amendment of urgency motions.

On Wednesday, 18 September a government senator proposed an urgency motion condemning apartheid and expressing support for Government actions in relation to South Africa. Senator Durack asked the President to split the motion under standing order 130, to allow the two parts of it to be put to a vote separately. Mr President noted that standing order 130 gives the Chair a discretion to divide a complicated question, but ruled that the question was not complicated, and the fact that a question was in two parts did not make it so. Senator Durack then moved a motion to suspend standing orders to enable an amendment to the urgency motion to be moved. This was carried, but subsequently the amendment was lost on division and the motion itself carried on the voices.

A motion under standing order 64 is moved to invite the Senate to vote on a proposition that a certain matter is a matter of urgency, and when the standing order was drafted it was thought that it would be inappropriate that such a motion should be amended. Where a party wishes not to take a vote on a motion to declare a matter

to be a matter of urgency, the course usually taken is to "talk it out" or move that the business of the day be called on. If these are not acceptable options, however, a party is virtually forced to decide to vote for or against a motion as moved.